Environmental Management by Local Authorities
under the Resource Management Act 1991

ASSESSMENT OF ENVIRONMENTAL EFFECTS (AEE): Administration by Three Territorial Authorities

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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NOTE: These findings are a result of investigating three territorial authority case studies, and fifteen detailed resource consent examples. Given this small sample, the findings should be taken as indicative of trends rather than fully representative of territorial authority experience of the Resource Management Act.

The examples chosen within the case studies are more representative of "controversial" rather than "typical" consent applications for the councils concerned. Although the sample does not represent the usual workloads of councils, it is a useful indication of whether councils effectively deal with more difficult issues and applications for activities that may have significant impacts on the community.

Throughout this report "assessment of environmental effects" is abbreviated as AEE, and the Resource Management Act 1991 is abbreviated as RMA.

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Copies of the background report (details from the three case studies) are available on request from this Office.

PREFACE

My main intention with this investigation has been to identify good practice by local government in the administration of procedures for the assessment of environmental effects.

The coming into force of the Resource Management Act in 1991 heralded the introduction into New Zealand law of an explicit requirement for environmental effects to be taken into account when decisions are taken on the use, development and protection of natural and physical resources. The principal instruments for providing information for territorial authority decisions on resource consent applications are the assessments of environmental effects provided by applicants, submissions made by third parties in response to notified applications and Council staff reports. The Assessment of Environmental Effects is central to the whole resource consents process. Although the responsibility for providing the assessment is the applicant's, the role of Council staff is no less important.

This investigation shows three Councils who have made considerable progress in establishing systems for ensuring good information is available when decisions are taken on applications for resource consents and District Plan changes. This is a commendable achievement in a 3 year time frame given that the Councils have at the same time had the additional burden of preparing their District Plans. It also shows these systems being put to good effect with environmental effects information cited in reasons for decisions.

I am also pleased to report that some innovative procedures have been developed. These include consultative mechanisms for identifying iwi concerns, constructive use of pre-hearing meetings to clarify information and resolve conflict, and the provision of written guidance to applicants tailored to the environmental assessment requirements for the type of consent they are seeking.

While a good start has been made the investigation also shows areas where more work is required. Public understanding of what is required in an assessment of environmental effects, is in my opinion inadequate. There appears to be little appreciation that an assessment of environmental effects is a process whereby an applicant is able to adjust proposals in order to mitigate effects identified during the assessment. Identification of effects may require consultation with experts and the community. There are too many applications arriving at Councils having insufficient or inadequate information and too many affected parties giving written approval for proposals without sighting assessments and/or giving due consideration to possible adverse effects and remedial or mitigation measures.

I would like to see Councils, with the support of the Ministry for the Environment and the Local Government Association, give more attention to providing services which encourage prospective consent applicants to consult with Council staff before applications are lodged and encourage affected parties to ask for full information on mitigation before signing consents. There would be merit in having a video illustrating proposals for different activities and how decisions and actions can be improved with good environmental assessments and consultation. Such a video could be made available to the public in every Council office or information centre.

Helen R. Hughes

Helen R Hughes
Parliamentary Commissioner for the Environment

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1. INTRODUCTION

Through the Resource Management Act 1991 (RMA) Parliament has given local government the role of being principal public managers of the New Zealand environment. Under s 31 of the Environment Act 1986 and s 24 of the RMA, the Ministry for the Environment provides guidelines on the use of the Act and advises its Minister whether Government policy objectives are being achieved. Among other functions under the Environment Act, the Parliamentary Commissioner for the Environment provides an independent opinion on how well that role is being performed.

This is the first in a series of investigations into local authority management of the environment under the RMA. Parliament has agreed that the Commissioner carry out a staged programme, each year selecting two aspects of local authority administration of the RMA. Subsequent investigations will review case study groupings based on other population sizes, areas and regional councils. It is hoped that the results will be of use to councils in improving practice and to Parliament and the public in monitoring environmental management performance.

1.1 Terms of reference

1. In accordance with section 16(1)(b) of the Environment Act 1986, to investigate the adequacy of local authority administration of the assessment of environmental effects (AEE) provisions of the Resource Management Act 1991, with attention to:

    a. Council system for giving advice to applicants on scoping[1] and consultation;

    b. Council procedures for reviewing and reporting on AEE documentation provided by applicants;

    c. Council resources for dealing with AEE (eg: training of staff, time allocation); and,

    d. Council system to ensure mitigation of significant adverse effects
    (eg: mitigation plans from applicants, conditions placed on consents, feedback from monitoring).

2. To conduct the investigation by means of a sample of three case studies of territorial authorities which serve populations

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[1] The term 'scoping' refers to the process of determining the significant issues, effects and affected parties. The purpose of scoping is to ensure the assessment of environmental effects is focused and appropriate to the scale and intensity of the proposed activity.

between 30,000 and 40,000, and include one unitary authority; Marlborough District Council, Upper Hutt City Council, and Waipa District Council.

3. To report to the conference of the New Zealand Local Government Association (10-12 July 1995) and by means of the Parliamentary Commissioner for the Environment's 1994/95 Annual Report to Parliament (ca. October 1995).

1.2 Methodology

The councils selected were solely for case study purposes. The councils comprise an urban and a rural location in the North Island (Upper Hutt City and Waipa District Councils) and a Unitary Authority in the South Island (Marlborough District Council), which each serve similar sized populations (30,000 - 40,000).

Fifteen resource consent applications (5 per council) which had been processed since October 1991 were selected for detailed examination. These were selected from a full list of consent applications provided by the councils. The case study examples were selected from five specific types of activity; "greenfield"[2] industrial development, quarry/mining, forestry, council as consent applicant, and subdivision. The advice of council planning staff on representative applications and those attracting particular public interest was also considered.

The examples chosen were more representative of "controversial" rather than "typical" consent applications for the councils concerned. Although the sample does not represent the usual workloads of councils, it is a useful indication of whether councils effectively deal with more difficult issues and applications for activities that may have significant impacts on the community.

The selected consent applications were investigated by checking related council documents and interviewing council staff and councillors, consent holders, community groups and other parties who participated in application proceedings. If council staff and interested parties suggested other types of consent these were noted as supplementary illustrations, but were not investigated in the same detail as the main examples.

An issues checklist was used to help gather consistent data and to assess how well each council was managing its statutory responsibilities (this was an expanded version of Figure 1.1). Any innovative practices, and problems councils and communities were encountering in the administration of environmental effects assessment requirements under the RMA were noted.

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[2] "Greenfield" refers to new industrial development in a previously non-industrial area (usually rural).

Councils and key interviewees were given the opportunity to check the first draft of case study findings for accuracy and the text was amended accordingly. These findings formed the basis for the main report, and the background case study texts are available from this Office on request.

Prior to publication the councils were given the opportunity to review the main report, and a group of five peer reviewers commented on the main and background reports. The members of the external peer review panel are listed at the front of this report.

1.3 Fundamentals of environmental assessment

> *"The assessment of environmental effects is a process by which the consequences for the environment of a proposal or policy are identified early in the decision-making process, so that these can be taken into account in the design, approval and management of a proposal."*[3]

The assessment of environmental effects provisions in the RMA evolved from some 20 years of environmental assessment experience in New Zealand, principally under the Environmental Protection and Enhancement Procedures, as well as overseas experience. The principles of environmental assessment are now well established. For the first time in New Zealand, the RMA created a statutory obligation to promote sustainable management of natural and physical resources, and a statutory requirement for (AEE) to be part of resource consent applications.

Under the RMA, the purpose of an AEE is both to inform potentially affected parties so they can effectively participate in the consents process, and to provide environmental effects information to the consent authority so that the authority can ensure its consent decisions are consistent with sustainable resource management. A good AEE process also helps to resolve conflict and ensures that applicants, affected parties, and the consent authority can jointly consider conditions, mitigation and monitoring provisions.

The complexity and cost of environmental assessment should be no more than is appropriate given the nature of potential impacts, and the significance of the resources to affected parties and the public,[4] so as not to add to the cost or complexity of decision-making.

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3 *Principles and Issues Concerning the Assessment of Environmental Effects*, information sheet in November 1992 kitset from Ministry for the Environment.

4 See s. 88(6)(a), Resource Management Act 1991, and Ministry for the Environment guidelines (see Table 2.1 for a list of titles).

Figure 1.1 summarises AEE "good practice" principles prepared by the Office of the Parliamentary Commissioner for the Environment. The statutory role of the AEE in the resource consent process is amalgamated with these principles in the flow diagram in Figure 1.2.

1.4 Legal framework: assessments of environmental effects

1.4.1 The purpose of the Resource Management Act 1991

The purpose of the RMA is to promote the sustainable management of natural and physical resources. Section 5(2) defines "sustainable management" to mean -

> "[M]anaging the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while -
>
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."

The Act is focused on effects rather than on uses and is concerned with ensuring that the adverse effects of any activity on the environment are avoided, remedied or mitigated. Paragraphs (a) to (c) of s 5(2) are now generally regarded as constituting an environmental bottom line.[5] Consequently, the assessment of effects will be fundamental to the operation of the RMA.

The RMA requires an applicant for a resource consent to provide an assessment of the effects of a proposal and of the ways in which any adverse effects may be mitigated,[6] and so too any person, other than a local authority, who requests a plan change.[7]

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5 *Shell Oil New Zealand Ltd v Auckland City Council* W8/94, Judge Kenderdine; *Marlborough District Council v New Zealand Rail Ltd* (the Fast Ferries case) W40/95, Judge Treadwell, 5/5/95. There are exceptions to this view see *Titterton v Dunedin City Council* [1994] NZRMA 395.

6 Section 88(4)(b) and Fourth Schedule.

7 Sections 64 & 73 and Part II of the First Schedule.

Figure 1.1: Basic good practice criteria for assessment of environmental effects

APPLICANT

1 **Give early attention to adverse effects, risk assessment, and identification of affected parties (ie scoping).**
It is essential to understand early what the most significant effects and risks of the proposal are likely to be and the full range of parties likely to be affected. Effective contingency plans are required for risks of adverse effect. Assessment of environmental effects (AEE) documents should be consistent with the scale and significance of environmental effects. (s 88(6)(a) RMA).

2 **Prepare AEE in consultation with affected parties BEFORE plans are finalised.**
It is important to be able to incorporate effective prevention, remedy, or mitigation of adverse effects into project plans. This means early consultation when there are still options open, such as alternative sites, layout on sites, and designs. Good AEE practice is *iterative*, involving repeated communication between the applicant and the affected parties as the AEE and the project plans evolve.

CONSENT AUTHORITY

1 **Give clear guidance to applicants on council's AEE requirements.**
This may be provided with the resource consent application forms and/or through District and Regional Plans.

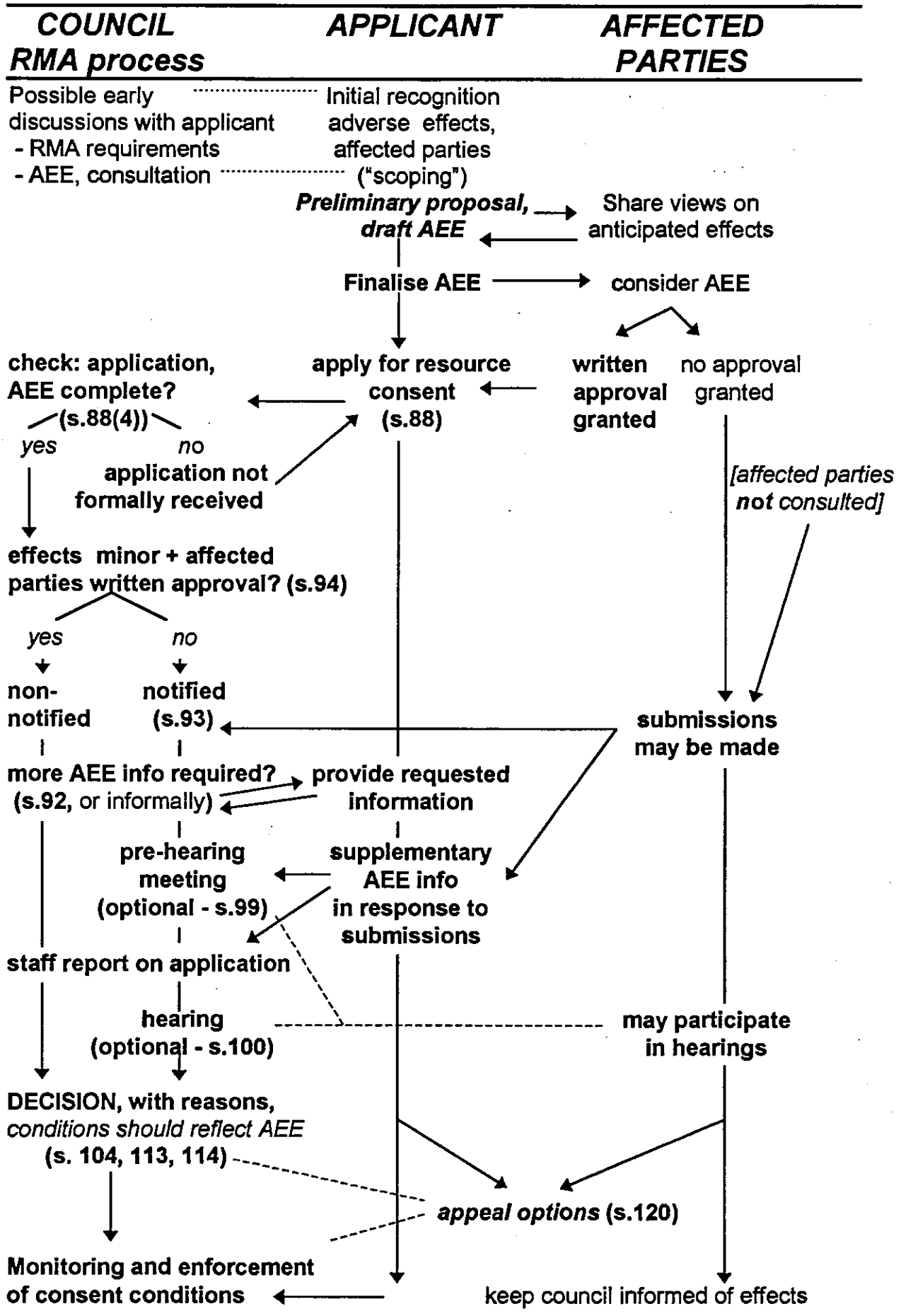
2 **Apply effective means of checking accuracy of AEE and adequacy of consultation.**
Applicants will naturally emphasise the positive aspects of their proposed activity, but a balanced assessment is required by decision-makers. Staff expertise will not cover all technical issues, and an independent assessment may need to be commissioned. Reliance on public submissions may not be sufficient as not all interested parties may sight the notification or have the time or skills to present their concerns in writing. Nor will they be involved with non-notified applications.

3 **Explain fully the reasons for decisions.**
If the recommendations of applicant, affected parties, or staff who have analysed AEE are not agreed with, reasons should be stated in writing.

4 **Use pre-hearing meetings to clarify issues and if possible resolve conflict.**

5 **Apply monitoring and consent review programmes to ensure avoidance or mitigation of adverse effects.**
The ability of consent conditions to mitigate adverse environmental effects needs to be continually monitored and reviewed by councils.

Figure 1.2 : Flow diagram of the resource consents process, showing the role of AEE, and good practice



The AEE will be influential in the decision to grant or refuse a consent and in the identification of persons likely to be interested in or affected by a proposal and who therefore should be consulted. The information disclosed in the AEE will also be relevant to the decision of the consent authority as to whether or not to require an application to be notified.

1.4.2 What are "effects"?

The word "effects" is broadly defined in s 3 as including, unless the context otherwise requires -

"(a) Any positive or adverse effect; and
(b) Any temporary or permanent effect; and
(c) Any past, present, or future effect; and
(d) Any cumulative effect which arises over time or in combination with other effects -
regardless of the scale, intensity, duration, or frequency of the effect, and also includes -
(e) Any potential effect of high probability; and
(f) Any potential effect of low probability which has a high potential impact."

The Board of Inquiry, reporting on the proposed Stratford combined cycle power station,[8] discussed the meaning of "effects". Referring to *Duncan v Wanganui District Council*,[9] the Board of Inquiry found the categories in paras (a) to (c) to be very general and to require the Board to consider any effect regardless of scale. It found that para (d) was included to ensure that the definition was not interpreted too narrowly to mean a single isolated effect from a particular activity. The Board considered the phrase "other effects" in para (d) to mean effects resulting from other activities which in themselves may or may not be adverse.[10] From the inclusion of paras (e) and (f) in the definition, the Board assumed first that the RMA does not require consideration of potential effects of low probability and low potential impact and therefore that any interpretation as to the nature of uncertain effects must be reasonable and second that it is the risk arising from an activity which must be considered. Whether or not the effects are adverse may well depend

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8 Report and recommendations of the Board of Inquiry pursuant to s 148 RMA, *Proposed Taranaki Power Station - Air Discharge Effects*, 1995.

9 (1992) 2 NZRMA 101.

10 See also *Elderslie Park Ltd v Timaru District Council* 24/2/95, Williamson J, HC Timaru CP10/94, where the High Court found that in having regard to the overall result of an activity, it is appropriate to evaluate all matters which relate to effects, including any beneficial effects.

on the nature of the environment of the proposed location for the activity.[11] Cumulative effects are discussed in greater detail in chapter 5.

1.4.3 Resource consent applications

The AEE required as part of the application is an assessment of any actual or potential effects that the activity may have on the environment, and the ways in which any adverse effects may be mitigated.[12] For a controlled activity or a discretionary activity (where the local authority has restricted the exercise of its discretion) the AEE is only required to address those matters specified in a plan or proposed plan over which the local authority has retained control, or to which it has restricted the right to exercise its discretion.[13] The AEE for an activity is required to be in such detail as corresponds with the scale and significance of the actual or potential effects on the environment that the activity may have and the AEE is to be prepared in accordance with the Fourth Schedule to the Act.[14]

It could be argued that each of the matters listed in cl 1 of the Fourth Schedule does not have to be dealt with in every AEE, rather, those matters which are appropriate to the activity concerned should be addressed. Clauses 1 and 2 of the Fourth Schedule are expressly subject to any policy statement or plan, and ss 67(1)(f) and 75(1)(f) enable councils to include in plans, statements of the information to be submitted with resource consent applications, including the circumstances in which the powers under s 92 may be used. These provisions allow consent authorities to guide applicants in the preparation of AEEs for specific sorts of proposals.

The effects identified in an AEE enable the consent authority to determine whether to require notification. If notification is required the consent authority must ensure that certain persons and bodies specified in s 93(1) are served with the notice and the consent authority must consider what persons and bodies are directly affected and whether it is appropriate to require them to be served. The consent authority must also consider whether it is appropriate to serve notice on any local, iwi or other authority or any person. A consent authority cannot come to a proper decision unless it knows what the effects on the environment are likely to be.

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11 *Darroch v Whangarei District Council* A18/93, where it was found that the noise and odour associated with farm animals do not necessarily amount to adverse effects in a rural environment.

12 Section 88(4)(b).

13 Section 88(5).

14 Section 88(6).

Generally applications for resource consent are to be notified;[15] however, s 94 provides exceptions to this presumption. Where a council may not require an application to be notified, because the activity falls within one of the exceptions in s 94, the AEE is crucial to the consent authority's determination of who is likely to be adversely affected and whether (in the case of discretionary or non-complying activities) the adverse effects will be minor. The AEE also forms the basis for the decision as to what conditions, if any, should be imposed. In some instances the AEE could also assist the consent authority in determining whether special circumstances exist in relation to an application.[16]

1.4.4 Changes to Plans and Policy Statements

Assessments of environmental effects are also required for changes to plans and policy statements where the change is requested by a person other than the local authority.[17] The person requesting the change is required to explain the purpose of and reasons for the change and to describe the effects, taking into account the provisions of the Fourth Schedule, in such detail as corresponds with the scale and significance of the actual or potential effects anticipated from the change.[18] A local authority may require the requester to provide further information.[19] As a result of all the information it receives concerning the request, the local authority may, with the agreement of the requester, modify the request.[20]

1.4.5 Summary of legal points made in this report

1 An AEE is an essential part of an application for consent or a request to change a plan (s 88(4)(b)).

2 An AEE is fundamental to the proper performance of a number of functions under the RMA (consultation, notification, identification of affected persons, making submissions, imposing conditions, making decisions). See 5.2.1.

3 An AEE must describe the effects of an activity with "sufficient particularity" (ie in sufficient detail) to enable the

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15 Section 93.

16 Where special circumstances exist, s 94(5) enables a consent authority to notify an application for consent which falls within the ambit of s 94 and which therefore would not normally be notified.

17 Part II, First Schedule.

18 The requirement is not exactly the same as for an AEE included in an application for resource consent as the requester only has to take the Fourth Schedule into account rather than prepare an AEE in accordance with it, however the difference is probably not significant.

19 Cl 23, First Schedule.

20 Cl 24, First Schedule.

functions (referred to in item 2 above) which depend on it to be performed, although reasonable compliance with the requirements of s 88(4)(b) will be sufficient. An AEE will comply reasonably if it is not seriously deficient or deliberately misleading, and if it identifies potential problems sufficiently to alert interested parties. See 5.2.1.

4 The Fourth Schedule of the RMA does not impose a requirement on applicants to consult with affected persons. However, if consultation is undertaken it should involve meaningful discussion and include a response to those consulted. Even though consultation is not mandatory under the Fourth Schedule, it may be required by a consent authority under s 92, as part of a request for further information. See 6.1.

5 If an AEE is inadequate, the local authority may:

a request further information (including commissioning a report) under section 92; or

b decline the application and require the applicant to submit a fresh application.

6 Applicants have no special responsibility to consult Maori except insofar as they are persons affected. However, as tangata whenua, Maori may be affected in ways in which non-Maori are not. See 6.1.2.

7 The decision as to who is a person affected is in the discretion of the consent authority, although the High Court has ruled that a liberal approach should be taken to identifying such persons. It is unlikely that the consent authority's decision on this will be overturned by the Court unless it can be shown that the consent authority acted irrationally. See 6.1.

8 A local authority is not obliged to provide advice to intending applicants. Any advice that is provided is not binding on the consent authority in its decision-making role. See 5.1.2.

2. BRIEF REVIEW OF RELATED STUDIES

Several New Zealand publications provide information and advice on carrying out assessment of environmental effects (AEE) or report the results of research into the application of AEE under the Resource Management Act 1991 (RMA). Relevant publications produced by the Ministry for the Environment are listed in Table 2.1 below.

Table 2.1: Ministry for the Environment reports providing information on AEE

Guide to the Resource Management Act August 1991, Reprinted January 1995

Resource Management: Information Sheet Number Five: Assessment of Effects December 1991

Assessment of Environmental Effects November 1992

An information kitset consisting of:

- Three information sheets:
  1. A Guide for Councils: How to Respond to Resource Consent Applications During the Transitional Period.
  2. A Guide for Applicants: To Assess the Effects of Proposals under the Resource Management Act.
  3. Principles and Issues Concerning the Assessment of Effects.
- Three tables:
  1. Principles for Assessing Authorities.
  2. Principles for Proponents.
  3. Principles for the Public.
- Form 5 Application for Resource Consent Under Section 88 of the RMA from the Resource Management (Forms) Regulations 1991.
- Resource Management Act 1991: Fourth Schedule

Resource Management: Scoping of Environmental Effects June 1992

Resource Consents and Good Practice February 1994

Time Frames for the Processing of Resource Consents February 1994

The RMA requires territorial authority elected representatives and employees to make major changes in the attitudes, perspectives and practices they bring to bear on resource management decision making. Whereas, under the previous statutory regimes, the consent authorities had to be concerned with the wise use of resources, they must now focus on the wider environmental effects of the use of resources and on their sustainable management.

The role of local authority planning practitioners and the issues and challenges they face in implementing the AEE requirements of the Act have been the subject of university research (Montz and Dixon 1993). The conceptual changes which that report identified are summarised in Table 2.2.

Table 2.2: Major conceptual changes required to implement Resource Management Act 1991 (after Montz and Dixon 1993)

	Town and Country Planning Act 1977	**Resource Management Act 1991**
Main emphasis	regulation of land use ***activities***	evaluation of ***environmental effects***
Purpose of planning	essential ***process*** in its own right	means of achieving ***outcomes***
Decision-making	***site-specific discipline-specific***	***integrated interdisciplinary***

In 1992 a university researcher surveyed the degree of success in implementing the AEE requirements under the Resource Management Act by means of a series of interviews with planning practitioners, staff of several regional, city and district councils and officials of the Ministry for the Environment (Morgan 1993). The survey revealed that one year after the introduction of the RMA the new culture had yet to become fully established in territorial local authorities. Key findings from the study were:

- Planners and practitioners expressed a great deal of support for AEE and its role in the RMA.
- Planners had to give advice and make judgements on effects, although they had no previous experience in administering EEA procedures. District plans prepared under the Town and Country Planning Act provided little guidance on the management of effects.
- Small scale proposals presented the greatest difficulty.
- Insufficient resources and councillors and public who lacked AEE awareness hindered the ability of staff to administer the councils' AEE responsibilities.

- Inadequate 'scoping' by applicants.[21]
- Some councils continued to take a 'sectoral approach' when assessing the effects of proposals and failed to integrate staff evaluations.
- Some councils did not adequately recognise the need for the community to interpret AEE information and be consulted on AEE findings.
- Uneven AEE quality control, particularly in regard to low public profile proposals, because councils relied on public scrutiny for determining the adequacy of AEE information.
- Little attention to cumulative and indirect effects by a significant group of staff.
- Where council staff were not trained in AEE theory and principles, a heavy reliance on the advice of consultants employed by consent applicants.
- Because there was no mechanism facilitating the flow of information between assessment studies, there was a potential for inefficient use of research resources.

The Ministry for the Environment publication *Time Frames for the Processing of Resource Consents* (1994b) has some bearing on the AEE process. Relevant findings from this survey of local authorities were:

- Territorial authorities notified significantly fewer resource consent applications (10%) than regional councils (50%) because Transitional District Plans set criteria for non-notification.
- Few councils had guidelines for identifying affected parties.
- Local authorities had to delegate functions to staff in order to meet the time frames of RMA.
- Requests to applicants to provide further information was the most frequent reason for extending the time it took to make decisions.

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[21] The term 'scoping' refers to the process of determining the significant issues, effects and affected parties, so that the AEE is focused and appropriate to the scale and intensity of the proposed activity.

- Applications from members of the public were responsible for most requests for further information and difficulties mainly arose from:
  - lack of attention to the Fourth Schedule
  - insufficient resources for providing the additional information
  - identifying affected parties
  - insufficient council guidance on information requirements
- Councils recognise that pre-hearing meetings are useful for clarifying issues and informing objectors about a proposal but also perceive pre-hearing meetings as difficult to arrange, difficult to facilitate (requiring staff experienced in alternative dispute resolution), and rarely suggested or agreed to by applicants.
- There are differences of opinion concerning the date an application is received. For example, one council did not acknowledge receipt of applications until the applicant had complied with the council's request(s) for additional information.

A second Ministry for the Environment study *Resource Consents and Good Practice* (1994a), evaluated 15 consent applications and concluded that good practice required:

- A sense of partnership between the applicant and the consent authority in mutually seeking expeditious processing of the application.
- Applicants willing to consult with the consent authority and affected parties, and council staff willing to assist with clarifying assessment information requirements, before the applicant lodges an application.
- Consent applications which include full information on environmental effects.
- Applicants, affected parties and council decision-makers being willing to attend pre-hearing meetings, to listen and take account of other views, to think carefully before making any commitments, and to honour any commitments made.

- Councils explaining clearly the basis on which charges are made and for council charges to fairly reflect costs incurred by the council in relation to the benefits obtained by the applicant.

- Councils keeping good records.

The study found from the 15 examples that the good practice requirements it had identified would;

- enhance the processing of consent applications through helping all parties to obtain an informed understanding of proposals;

- reduce conflict;

- assist applicants to provide assessments of environmental effects that would focus on issues of concern and reduce the risk of providing too much or too little information; and,

- reduce uncertainty for affected parties and help submitters make better quality submissions.

3. COUNCIL STATISTICS AND PROCESSES

Comparative data on the three case study councils are presented in Tables 3.1 to 3.3.

3.1 Demographics, expenditure (Table 3.1)

The three councils serve populations of similar size. Marlborough and Waipa Districts serve significantly larger areas than Upper Hutt and Marlborough District has a large area of coast and inland sea to manage as well. Marlborough and Waipa Districts also have larger rural populations, although in all districts the majority of the population lives in urban centres.

Relative levels of council expenditure are influenced by such factors as differences in district affluence, economic activity, level and quality of council service, and service delivery efficiency. This study did not include detailed analysis of such factors. Upper Hutt spends considerably less in total per capita than either Waipa or Marlborough. Comparison of regulatory division budget with the number of resource consents processed shows comparable figures when taking into account the relative levels of cost-recovery from consent applicants.

3.2 Resource consent statistics and staffing levels (Table 3.2)

NOTE: Although the case studies and examples are few, this table actually refers to a full year's data (all consents processed).

Marlborough District Council, a unitary authority processing both district and regional consents, processes ten times more consents than Upper Hutt, and more than twice as many as Waipa. Staff level comparisons between Marlborough and Waipa show similar relationship to number of consents processed, but compared with Upper Hutt they both have very high workloads.

If the percentage of notified applications attracting submissions indicates appropriate matching of the level of public interest and the decision to notify, then one could conclude that Upper Hutt is not notifying enough, and Marlborough and Waipa are notifying too often (100% compared to 53% and 59%). However, one must also consider statutory criteria for non-notification, requirements specified in the district plan, and policy decisions based on effects and perceived public interest (for example in Marlborough District, every application for a coastal permit for marine farming is notified). At the present time Marlborough and Waipa Districts have a policy of "when in doubt, notify".

Waipa District is making much more use of pre-hearing meetings than the other two councils (35% of notified applications, compared with 2% for Marlborough and 0% for Upper Hutt; Table 3.2). The use of pre-hearing meetings to help resolve conflict is discussed further in 6.4.

Waipa's rate of appeals to the Planning Tribunal is somewhat higher than the other councils (24% of applications attracting appeals, compared with 20% and 15%; see Table 3.2). The number of appeals to the Tribunal will depend on satisfaction with a council's decision, and also other factors such as the appellant's ability to pay legal fees.

All three councils are processing consents within statutory time frames (80% of the time or better). This is a performance measure, and improvements are being sought by the councils studied.

The three councils provide staff training for effective administration of the RMA principally through studying Ministry for the Environment (MfE) guidelines and Planning Tribunal decisions and providing in-house seminars. Also staff have attended MfE work-shops on the RMA when available. Specialist training in AEE under RMA has not been readily available, although university courses are improving in this regard. Staff are supported in obtaining additional training, within the training budget allocated. The councils have found New Zealand Planning Institute workshops useful from time to time.

A particular training need identified by all three councils was for the *councillors*, both councillors familiar with the previous consent granting regime and newly elected councillors. Some councils (for example Waikato District and Hamilton City) have pooled resources for training their councillors. This will be particularly crucial during 1995 and 1996, when new effects-based RMA Plans are notified and taken through the hearings process. The New Zealand Planning Institute has announced a "roadshow" to provide RMA-specific training for councillors, which will take place after the 1995 local body elections.

Table 3.1: Comparative data on case study councils; area, population, and expenditure

	Territorial Authorities		Unitary Authority
	WAIPA DISTRICT	**UPPER HUTT CITY**	**MARLBOROUGH DISTRICT**
Land area	147,700 ha.	54,286 ha.	175,170 ha. *also ± 1500 km² water in the Sounds*
Population	38,300	37,100	38,300
% of population urban[1]	82%	94%	77%
Expenditure per person [2]	$828	$514	$738
Ranking by expenditure per head of population [3]	16th	67th=	27th
Regulatory expenditure [4]	9%	4%	16%
Sub-budget including resource consents - Total	$1.595 M[5]	$0.345[6]	$1.442 M[7]
- Per person in district	$42	$9	$38
- Percent user pays	25%	28%	58%

All figures have been rounded.

1 Data provided by Statistics New Zealand, letter of 25/5/95; from 1991 census.
Waipa District advise that "Supermap" population projections for 1994 show only 65% urban.

Following data (items 2-4) based on the 1993-94 year is courtesy of *Management* magazine, April edition 1995, pp. 54-69.
To purchase a copy of the Local Body financial survey 1995, contact Kim Hall, Profile Publishing, telephone (09) 358-5455, fax (09) 358-5462.

2 Total direct expenditure per head of population. Regional levies have been excluded.

3 Ranking out of all 74 district, city, and unitary authorities. The higher the rank, the higher the expenditure per head of population.

4 "Regulatory" includes agricultural and vegetation pest control services, animal and hydatids control, building, plumbing and drainage inspection, civil defence and emergency services, environmental and health services, liquor licensing control, litter control, rates collection, and rural fire control.

5 Resource Management budget, Waipa District Departmental Business Plan for 1994/95. If overheads are included in expenditure, "user pays" percentage drops to 14%.

6 City Planning component of Regulatory Services Budget 1994/95 Annual Plan, p.30.

7 Environment and Consents budget, from Marlborough District Council Annual Plan 1993/94.

Table 3.2: Comparative data on case study councils; resource consents, 1993/94 year
(With data from two other non-case study councils for comparison with the unitary authority case study)

	Territorial Authorities		Unitary Authorities		Regional Council
	WAIPA DISTRICT	**UPPER HUTT CITY**	**MARLBOROUGH DISTRICT**	*TASMAN DISTRICT*	*WELLINGTON REGION*[1]
Total applications (subdivisions + other)	**635** (250 + 385)	**150** (50 + 100)	**1514** (352 + 1162)	*1034 (304 + 730)*	*515*
Notified *(% of total)*	32 *(5%)*	5 *(3%)*	220 *(16%)*	*307 (30%)*	*66 (13%)*
Hearings *(% of total)*	23 *(4%)*	5 *(3%)*	134 *(9%)*	*158 (15%)*	*9 (2%)*
Not granted *(% of total)*	14 *(2%)*	6 *(4%)*	18 *(1%)*		
s 92 requests for more information[2]	- *(±50%)*	56 *(37%)*	- *(±50%)*		
Attracting submissions *(% of notified appl.)*	17 *(53%)*	5 *(100%)*	±130 *(±60%)*		*35 (53%)*
Pre-hearing meetings *(% of notified appl.)*	11 *(34%)*	0 *(0%)*	4 *(2%)*		
Appeal to Planning Tribunal *(% of total)* *(% of notified appl., % notified w/submissions)*	4 *(1%)* *(13%, 24%)*	1 *(1%)* *(20%, 20%)*	19 *(1%)* *(9%, 15%)*		*3 (1%)* *(5%, 9%)*
Number of staff[3]	4+2[4]	4+1[5]	12[6]	15 + 3[10]	
Special monitoring/enforcement staff[7]	1	0	1+1	1 part-time	
Processing w/in statutory timeframe	80%-100%[8]	88%	80%[9]	65%	

Percentages have been rounded.

Footnotes to Table 3.2

1 Included for comparison with Marlborough District Council, which as a unitary authority has regional council responsibilities. Source: Letter to PCE from WRC, 27 April 1995.

2 Waipa and Marlborough data estimates only. Waipa District has a new database field which should be able to provide more exact data for 1995/96. Percentages of total applications accepted.

3 Staff figures include the District Planner, who has a role in quality control of advice and decisions on resource consents.

4 Waipa District hires planners on contract to meet peaks in workload; presently two planners are on contract in addition to four planners on permanent staff.

5 Full staff is five, but one position remains vacant. Another planner has been hired on contract for development of the new draft Plan under RMA.

6 For staff involved in evaluation of resource consent applications; administrative processing assisted by 11 other staff, and statutory and strategic planning done by additional 4 staff.

7 All planning staff have monitoring and enforcement responsibilities, but this activity has lower priority than meeting statutory time frames (e.g. new RMA Plans, new RMA consents). Waipa staff hired in 1994/95; Marlborough hired one staff in 1994/95 and will hire another in 1995/96.

8 Processing rates vary for type of consent: for notified district consents = 100%, for non-notified consents delegated to staff = 97%; and for joint consents with regional council and delegated consents that staff refer back to council committee = 80%.

9 For the first quarter of 1994/95 the achievement has improved to 90%.

10 13 full time + 3 part-time resource planners, 2 fulltime subdivision officers, 3 part-time administration staff.

Table 3.3: Comparative information for case study councils; structure, district plan, resource consent process

	WAIPA	UPPER HUTT	MARLBOROUGH
District plan	6 Transitional Plans. Draft plan under RMA **notified 31 March 1994**; review process underway.	1 Transitional Plan. Anticipate draft RMA plan to be **notified Oct/Nov 1995.**	5 Transitional Plans. 2 Draft plans under RMA; first to be **notified July 1995; second to be notified July 1996.**
Structure - committee	Regulatory Committee	Development Co-ordination Committee, Judicial Committee, and Full Council	Resource Management & Regulatory Committee
- division, department (manager)	Regulatory Division Resource Management Department (District Planner)	Community Facilities Department City Planning Division (City Planner)	Resource Management & Regulatory Dept. District Planning Division (District Planner)
- departmental functions	RMA consents, planning, environmental health, liquor licensing, engineering regulation, rural fire control	RMA consents, planning.	RMA consents, environmental health, building inspections, plumbing & drainage, resource monitoring.
Delegated decisions	Delegated to planning staff: - whether to notify - granting of non-notified consents	To Chief Executive Officer: - whether to notify - who affected parties may be - decisions on non-notified subdivisions & boundary adjustments complying with Plan.	Extensive delegations, committees and staff. Eleven in total to District Planner, includes whether to notify consent applications.
Accountability for delegated decisions	Monthly reporting to Committee; chairperson welcome at staff decision-making meetings. Policy 2.3.3 provides criteria for determining minor effects.	Delegations Manual	Detailed Instrument of Delegation. Monthly reporting to Council.
Workload trends	Completion and submissions review for new draft District Plan a major task. 1993/94: number of resource consents up 25% on previous year. 1994/95 to Feb. revenue from consent fees up 79% (with same fee structure).	New RMA Plan major task, especially with full staff complement not available.	Number of resource consent applications up 43% from 1992/93 to 1993/94: for 1994/95 (1/2 year) up another 23%.

	WAIPA	UPPER HUTT	MARLBOROUGH
Iwi liaison structures	**Waipa Iwi Liaison Committee** Advises Council on policy matters; members senior Crs. & staff, 2 reps each from 3 tribal trust boards. Meets quarterly. **Nga Iwi Topu o Waipa** Provides tribal response to Council requests; contracts to Council to vet resource consent applications for iwi concerns. Membership hapu-based.	**No Council iwi liaison group.** Attempts to establish consultative relationship (one major iwi group) have been unable to resolve issue of financial commitment. A working relationship exists with local urban marae. Council seeks to involve iwi in consultation; advises applicants on appropriate iwi contact.	**Iwi representative on Resource Management and Regulatory Committee** 8 major iwi groups, some tribal disagreement on representation. **Iwi representative vets resource consent applications;** advises which iwi should be consulted.
Resource consent forms	- form for basic details - explanatory notes: RMA, consents process - RMA 4th Schedule verbatim - affected party consent form - checklist - planning & engineering info for subdivision consents	- form for basic details - RMA 4th Schedule verbatim - affected party consent form - Planning & engineering info for subdivision consents	- form for basic details - explanatory notes: RMA, general AEE guidelines, consents process - RMA 4th Schedule verbatim - affected party consent form - AEE guidelines specific to type of consent
Additional consultation guidelines	Verbal advice at public counter; good practice encouraged. Advice not recorded.	Verbal advice at public counter; good practice encouraged. Advice not recorded.	Verbal at public counter; written advice specific to proposals in some cases. List of community groups for consultation used by staff.
Council as applicant: procedure	Independent commissioner retained for significant consents; recommendations usually followed by Council.	Consider that independent commissioner would be used for significant contentious issues, but none over last 4 or 5 years.	Same practices applied to council departments and subsidiary companies as to any other applicant (Code of Practice). A commissioner always has delegated authority to grant consent.
Regional council aspects	Liaison with regional council on consent applications ad hoc; protocol not yet developed. Joint hearings regularly held where consent issues overlap; lead agency varies. Concern at time delay and cost implications when regional council involved.	Draft protocol prepared for joint consideration of resource consents, includes hearings procedure.	Being a unitary authority, council keen to integrate regional and district functions insofar as possible. Wide range of consents handled; all consent types handled by the same planning staff.

RMA = Resource Management Act.

3.3 District Plan, consent and liaison process (Table 3.3)

While they are preparing new effects-based District Plans under the Resource Management Act 1991, the councils operate under Transitional District Plans, which bring together a number of district schemes formulated under the Town and Country Planning Act 1977. Of the three councils studied, Waipa is the most advanced in its timetable of public notification, submissions, and hearings.

In comparison with the other two councils, Upper Hutt has limited delegation, and a more complex decision-making structure. In Marlborough and Waipa, single committees make decisions on notified consents and delegate non-notified consents to staff.

In Upper Hutt, the Development Co-ordination Committee can make the decision on non-notified applications or applications that have been notified and attracted no objections, as long as the decision is unanimous. The Judicial Committee hears other resource consent applications. Recommendations from both committees go to the full Council, which at times refers matters back to the committees for reconsideration.

Waipa has a much better developed iwi liaison structure than the other two councils, and sets a good example of workable interim processes. For further detail, see section 6.3.

4. RESOURCE CONSENT EXAMPLES SELECTED FOR CASE STUDIES

For each case study council five resource consent examples were selected for more detailed study. Table 4.1 is a summary of major features of these examples. More detailed information is contained in the background reports (available on request from the Office of the Parliamentary Commissioner for the Environment).

The fifteen examples were selected from a full list of consents provided by the councils, with attention to five activity types; "greenfield"[22] industrial development, quarry/mining, forestry, council as consent applicant, and subdivision. The advice of council planning staff on representative consents and those attracting particular public interest was also considered.

The selected examples are more representative of "controversial" rather than "typical" consent applications for the councils concerned. While the sample may not represent the usual work load of councils, it does help indicate whether councils are effectively handling the more difficult issues and applications for activities that may have significant impacts on the community.

For further details on predicted adverse effects, conditions imposed, and enforcement of conditions, see Table 7.1.

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[22] "Greenfield" refers to new industrial development in a previously non-industrial area (usually rural).

Table 4.1: Summary of main resource consent examples studied in case studies

ACTIVITY (consent type)	LOCATION	REF.	APPEALS	ISSUES/COMMENTS
WAIPA DISTRICT COUNCIL				
Quarry (land use)	Te Pahu	RC 1377	- (previous consent appealed, upheld w/ tech. changes)	Inadequacy of mitigation measures in AEE. Conditions not adequate to mitigate adverse dust and noise effects. Complaints re: monitoring and enforcement (some valid). Consent process costs out of proportion to scale of project.
Poultry sheds (land use)	French Pass	RC 1399	-	Odour, noise, vermin; addressed in pre-hearing meeting and conditions; effectiveness in practice unknown. Adverse effects from other poultry sheds in area aroused concern.
Factory (scheme change)	Bruntwood	Scheme Change 1	-	Visual effects, noise, traffic, effect on water and sewerage infrastructure. Pre-hearing meetings addressed concerns, reduced opposition. Adverse effects from existing industrial zone aroused concern.
Rural subdivision	Pirongia	SP 1966	-	Inadequacy of AEE re: soil drainage, access to esplanade reserves.
Rural subdivision	Lake Ngaroto	SP 2081	-	Example of iwi "safety net" working on non-notified consent.
UPPER HUTT CITY COUNCIL				
Bridge (land use)	Norbert St.	350/17/418	Yes (withdrawn)	Visual impact, security of river floodway. Council as applicant.
Quarry (land use)	Whitemans Valley	350/62/462	-	Monitoring programme imposed; revegetation/ visual effects. Proposal changed to avoid river bed; joint hearing with region not required.
Afforestation (land use)	Silverstream	350/62/308	-	Council as applicant. Visual impacts, soil stability; scope of AEE and consent conditions. Further consents required due to "restricted" zoning of area?
Rural subdivision	Leonards Rd.	350/62/419	-	Poor identification of affected parties, significant effects by applicant. Whether AEE and consent authority decision addressed key criteria in Plan.
Rest home (land use)	Fergusson Dr.	350/62/042	Yes - upheld, also Plan amendment	Community opposition; perceived conflict of project scale with special "conservation" zoning.

ACTIVITY (consent type)	LOCATION	REF.	APPEALS	ISSUES/COMMENTS
MARLBOROUGH DISTRICT COUNCIL (Unitary Authority)				
Marine farming (coastal permit)	Beatrix Bay	U940721	-	Effects on scenic, aesthetic values (adjacent scenic reserve). Ecological information in AEE not complete. Degree of reliance by planner on applicant's AEE.
Logging (land use) (land disturbance)	Port Underwood	U940012	-	Extensive consultation by applicants. Management plan submitted as part of AEE. Some conditions may be inadequate to mitigate adverse effects.
Rural subdivision	Wairau Plains	U941247	-	Minimum lot size to protect productive lands. Notification issues.
Rural subdivision (+ Plan change)	Waikawa Bay	U920072 U930709	By applicant - upheld w/ technical changes	Consultation with neighbours by applicant, but concerns not fully addressed. Some conditions may be inadequate to mitigate adverse effects. Evaluation of AEE superficial; redrafting of conditions at hearing.
Sewage treatment plant (discharge to air & water)	Blenheim	U940712	By submitter - not yet heard	Council as applicant. Consideration of alternative options, AEE on options. Consultation on major public interest issue.

5. AEE INFORMATION AND ANALYSIS

5.1 AEE information provided by applicants

5.1.1 Importance of AEE information

The quality of an AEE is fundamental to the resource consent process. A full and accurate AEE can obviate many objections and concerns. Less time is likely to be required in processing a consent application and in coming to a decision if local authorities do not need to seek further information from the applicant or to commission a report. A decision on a consent application which is based on a full and accurate AEE is more likely to stand up to scrutiny and may be less likely to result in appeals. It is in the interests of all parties that consent authorities should bring the advantages of a full and accurate AEE to the attention of applicants.

5.1.2 Councils' advice to applicants

The RMA does not specifically impose any obligation on a consent authority to advise applicants on any matter; rather the function of providing advice is seen as ancillary to the statutory functions of councils. To avoid allegations of bias a consent authority must take care to keep separate its administrative (advisory) role from its quasi-judicial (decision-making) role.

The council officers' role is different from that of the consent authority. The consent authority is acting in a quasi-judicial capacity and must maintain a distance from any applicants and submitters in respect of resource consents. The council officers' role is to gather information and provide advice to applicants with a view to facilitating the process, so that the consent authority has the best possible information upon which to make its decision under s 104 of the RMA.

Resource consent applicants fall into two strongly contrasting groups. The first group comprises individual members of the public or smaller businesses who wish to undertake relatively small projects, typically subdivisions, on a "one-off" basis. Their application for a resource consent is likely to also be a "one-off" contact with the council's planning and regulatory departments. The second group comprises usually larger businesses who wish to undertake relatively large projects and who employ specialist consultants to assist them. These consultants lodge applications frequently and are well aware of council requirements.

The two groups have different needs for advice from planning staff. While the former group needs detailed guidance, perhaps at several stages of the application process, the latter may request no guidance at all and may not visit the council offices at all unless the council requires them to do so to lodge their application. Naturally, planning staff deal with many situations which come between these two types

of needs. Generally, staff prefer applicants to make early contact with them, and this practice is desirable, even from applicants with extensive prior experience.

Public counter procedures for offering guidance to applicants vary between the three councils studied. Waipa District Council has a roster of all planning officers to do "counter duty", Upper Hutt City Council has one assigned counter duty officer, and in Marlborough District Council consents processing staff provide initial guidance and the resource planner assigned to the case handles enquiries thereafter. All procedures appeared to have some advantages and drawbacks, with no one being significantly superior to the others.

All three councils offer a variety of printed materials for the guidance of either staff, applicants and consultants or for enquirers at the public counter (see Table 5.1). Such materials include application forms, guides to the application and AEE processes, Ministry for the Environment guidelines, the RMA Fourth Schedule, relevant District Plans, policy manuals and checklists for processing. All three councils' application forms contain a reprint of the Fourth Schedule, which for "one-off" applicants would necessitate staff giving considerable further guidance. Upper Hutt City provides no further written interpretive information; the Marlborough and Waipa Districts' general guideline sheets provide an accessible written introduction for new applicants. Marlborough District Council's AEE guidelines have been specifically tailored to most types of consent sought and are particularly useful. Staff of all councils assist and offer verbal information on an individual basis as required.

All three councils have experienced problems arising from the verbal advice given in the early stages of an application, which except in the case of Marlborough is generally not recorded on file. Staff have found that it is open to misinterpretation. Waipa staff, for example, deduce that because many "small" applications come in with inadequate information, applicants have often not remembered or fully understood previously given verbal advice. A further problem with a liberal approach to offering early advice is that this can result in the staff planner becoming closely involved in writing the application and preparing the AEE. Apart from being a misuse of council resources, this creates potential problems of conflict of interest for the staff planner when evaluating that application, and potentially a misunderstanding by the applicant that such assistance or advice is binding on the consent authority (see below). Marlborough District Council now has a policy of encouraging applicants to get professional advice on critical issues, and of staff where possible giving written rather than verbal advice on matters specifically relating to a particular application.

Staff of all three councils offer general verbal guidance concerning whom applicants should consult, but no council provides written

guidance on this. It may be useful for councils to provide a short written statement of why and whom applicants should consult, perhaps as a one page summary attached to the standard consent form issued by most councils to applicants (see 6.2.2).

Council officers must ensure that notwithstanding the above comments, when they do advise intending applicants, the advice is clear and accurate. An intending applicant ought to be able to rely on the quality of the advice given by a consent authority. Clearly, if the advice given to an intending applicant is good advice, the applicant who does not follow that advice may find him or herself subject to a request for further information before the application can proceed.

Table 5.1: Summary of written advice to applicants; MfE and Council guidelines compared

	MfE guidelines	Council guidelines		
		Waipa	U.Hutt	M'boro
RMA process explained	✓	✓		✓
4th Schedule RMA	✓	✓	✓	✓
Consultation: good practice, role in AEE	✓	✓		✓
Consultation: iwi	✓			
Consent forms for affected parties		✓	✓	✓
Consent-specific AEE requirements		(✓) (draft plan)		✓ (hand-outs)

Summary: Waipa District

5.1.3 AEE by applicants

Applications for larger projects, prepared by consultants familiar with council's requirements under the Act, were generally complete and of an adequate standard to enable council planning staff to fairly assess the proposed activity. An example was the Natural Gas Corporation's pipeline application, which was regarded as particularly good, and preceded by good pre-application consultation on issues raised by affected parties. In contrast, planning staff considered AEE for smaller-scale proposals, sometimes but not always prepared by the applicants themselves, to be of a lower standard, and provide insufficient information, especially relating to key issues. An estimated 50% of applications were considered to be lacking adequate AEE information.

Summary: Upper Hutt City

The applications studied as examples were mainly of medium scale, with AEE prepared by both applicants themselves (including council departments) and consultants. A relatively small number of consultants regularly provide AEE for applications submitted to council, and a tendency was noted for applications to meet the minimum standards under the Fourth Schedule without providing substantial information on significant effects. For the 1993/94 year additional information was required under s 92 for 37% of all applications. Some of the AEE undertaken in the examples studied was of a poor standard, with omissions identified concerning soil productivity and ecological effects of proposals, and effects on communities in terms of services required and concerns of affected parties. The planner's assessment often provided significant AEE information further to that provided in the applications, and this raises the question of whether such information should be provided at public expense.

Summary: Marlborough District

The examples studied were of very variable quality, and some had significant shortcomings. The most conspicuous gaps in AEE were in the area of assessment of ecological effects. Council staff estimate that over 50% of applications received are deficient and in some cases the amount of information provided by applicants or their consultants was minimal. Such shortcomings do not necessarily relate to the amount of information in the assessments or to the resources made available for the assessment. In the examples studied the assessment was often dominated by statutory planning issues and in some cases appeared to be little more than an interpretation of planning law such as legal counsel might argue to justify a proposal.

Synthesis

Overall the standard of AEE in applications seen was extremely variable. In some cases this depended on the level of resources the applicant put into the assessment, but this was not always the case because examples of both good and poor assessments prepared by applicants themselves, applicants assisted by professional advisors, and solely by specialist consultants were sighted.

In general, more problems arise with applications prepared by or for "one-off" applicants for smaller projects, where staff acknowledge that applicants generally need more guidance (see 5.1.2). Where one or a small group of consultants produce most of a certain type of application in a district, they may tend to produce "recipe book" type assessments that conform to known minimum council standards but have little information content specific to an individual application. When such an assessment concerns a small subdivision with few

direct environmental effects, this may be of little consequence. However it should be noted that as small subdivisions are generally non-notified there is usually no opportunity for potential effects to be identified by affected parties. For other activities, and in particular for large numbers of marine farming applications in the Marlborough district, which alienate public space for a relatively long time and have potentially significant environmental effects, the sustainable management requirements of the RMA require a more rigorous assessment (see 5.2.4 for discussion of cumulative effects).

For many projects, a non-technical, commonsense approach to the assessment of effects is perfectly adequate. An assessment can be simply based on a thorough description of the intended project, leading into a "scoping-type" outline of the principal likely effects based on the project description, and later fleshed out by addressing the concerns of affected parties. Such an approach can be usefully guided by council staff (see 5.1.2). For other, usually larger, projects, no such generalisations are possible, and the detail and range of the assessment depends closely upon the intended activity. Thus it is entirely to be expected that for any assessment some parts would be more detailed and substantive than others, even though some assessments may be very brief overall. However **the minimum requirement for assessment of a project that is thought to have minor environmental effects, should be that the applicant demonstrates that the effects of the intended activity will indeed be minor.**

In the Marlborough case study examples, for all of which applicants engaged consultants, applications tended to more thoroughly cover statutory planning aspects (i.e. evaluation in terms of District Plan, RMA requirements, etc) than the technical assessment of biophysical effects. Such a trend was not as evident in the other two case studies, and it is difficult to judge whether the scarcity of local specialist consultancy expertise affected the Marlborough situation. However a deficiency in the coverage of ecological effects assessment was evident in all three case studies. Because of the nature of its regional functions this was more noticeable for Marlborough, but ecological assessments are also required for several categories of land use and other consents issued by district councils.[23]

Several interested parties have expressed concern about the adequacy of information supplied by applicants in Marlborough, most notably the Department of Conservation in relation to marine farming

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[23] The Parliamentary Commissioner for the Environment has also recently commented on the variable quality and some significant shortcomings in the AEE undertaken by applicants for land use consents for burning in the South Island tussock grasslands (Parliamentary Commissioner for the Environment 1995). In such cases the consent authorities are regional councils.

applications. In two cases in Waipa, adequate information was only provided in response to submissions. In Marlborough, council staff and consultants have submitted that some of the more descriptive ecological information, which the Department of Conservation suggests should be routinely supplied by applicants, may in some cases be more fairly described as "Public Good" knowledge which should be obtained at public rather than private expense.

In most of the examples studied, concerns of affected parties were dealt with at least to some extent. Examples of good practice by applicants were observed in all three districts, as well as examples where affected parties alleged that their concerns had not been met. Often unclear, however, was the basis on which affected parties were informed of the proposed activity and its environmental effects (see 6.5).

In a couple of examples, concerns of affected parties appeared to have been given minimal weight, either because of an assumption that environmental effects were minor, or in one case in Upper Hutt, the Council department making the application deciding that as the application was going to be notified, the submissions and applications process would deal with all concerns. Such an attitude begs the question of how the applicant assesses "any effect on those in the neighbourhood and, where relevant, the wider community ...."(Fourth Schedule cl 2(a)), and in potentially controversial cases this approach may well intensify opposition. In contrast were examples of good practice where applicants had actively sought to ascertain the concerns of affected parties, such as the Natural Gas Corporation pipeline in Waipa District, the Port Underwood logging proposal in Marlborough District, and the Whitemans Valley quarry proposal in Upper Hutt City.

There were significant differences in the assessment of subdivision proposals on rural land, as discussed in the Upper Hutt and Marlborough case studies. The Wairau Plains subdivision in Marlborough illustrated a cautious case by case approach to approving a subdivision below a threshold area. Retention of the potential of highly productive soils is a common objective of Regional Policy Statements, and the approach described for Marlborough is similar in a number of other peri-urban areas with high quality soils. In these cases councils require a high standard of proof in the AEE, in order to demonstrate that a subdivision application would not compromise net land productivity or profitability, or require additional infrastructure to provide servicing. A different approach is illustrated by the rural subdivision example in Upper Hutt. Here, the amended Transitional District Plan provided for subdivision below a threshold as a discretionary activity subject only to **being capable** of being used for productive purposes or for a range of other complying uses. Thus, beyond a general statement that the application would not entail adverse effects on natural or physical resources, the AEE in

this example did not address land productivity, economic or infrastructure servicing, although later the applicants supplied some information on these aspects. The application was not notified.

5.1.4 Use of the RMA Fourth Schedule

All the councils make the Fourth Schedule of the RMA available as a guide to applicants, in accordance with s 88(6)(b) which states that any required assessment "shall be prepared in accordance with the Fourth Schedule". Although the Fourth Schedule is thus clearly an important statutory guide to AEE requirements, councils still need to provide some guidance its use. Morgan (1993) reported fears that councils may use the Schedule to impose excessive requirements for AEE. The possibility that councils may overuse the Schedule as a rigid prescription, imposing inappropriate information requirements on applicants has also been a concern of this Office.

Two of the case study councils still advise applicants to stick closely to the Fourth Schedule, partly as a precaution against later challenges. However, in the case studies there was no evidence of overuse of the Fourth Schedule. Consultants interviewed were aware of the Schedule's status and did not express any concern that Councils' use of the Schedule might be overly prescriptive. One application in Upper Hutt was clearly prepared as a specific response to the Fourth Schedule framework but the resulting AEE was nevertheless appropriate to the scale of the proposed activity.

The most important guiding principle is that expressed in s 88(6) of the RMA; that environmental assessment should be appropriate to the scale and scope of actual and potential effects of proposed activity. Under this principle the Fourth Schedule is a guide as to what is **not** required to be covered in detail, as well as to what is required. Some applications, such as boundary adjustments, have few environmental effects and do not require more than a cursory treatment of most aspects of the Fourth Schedule. Other applications may entail a detailed assessment of one or two aspects, as occurred for example with the Wairau Plains subdivision in Marlborough. Yet other applications could in fact require **further** assessment to that specified in the Schedule, as acknowledged in Marlborough District Council's guidelines for applications.[29]

Council staff need to give specific guidance as to which aspects of the Schedule are likely to need careful assessment for individual applications. Consultants also need to take some responsibility for assessing which parts of the Schedule need most careful attention. It can be argued that the use of the word "should" in s 88(2)(b) implies that every AEE does not have to deal with each matter listed in cl 1 of

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[29] Although this point is not specifically acknowledged in s 88 of the RMA.

the Schedule, but rather that every AEE should address those matters which are appropriate to the activity concerned (as specifically provided for in cl 1(g) and (i) of the Schedule). Specific guidelines for different types of applications, such as those provided by Marlborough District Council, are very useful. Councils may also use District or Regional Plans to provide further guidance on environmental assessment for specific types of activities in their district or regional plans (ss 67(1)(f)) and 75(1)(f) and preface to cl 1 and 2 Fourth Schedule). Moreover under s 88(5) (as amended 1993), a council may specify certain matters in a plan over which it is to retain control or exercise discretion; for subsequent resource consent applications relating to controlled or discretionary activities the council need only require an AEE to address those matters.

5.2 Council review of AEE

All the case study councils have now established procedures for receiving and accepting resource consent applications; these are efficient in terms of meeting statutory timeframe obligations (Table 3.2). Meeting tight timeframes without sacrificing quality or making routine use of statutory extensions means that these procedures have to be very efficient.

5.2.1 Receiving applications and assessing the adequacy of AEE

The main question of quality at this stage of the process concerns how the council checks the adequacy of information supplied with the application, in particular the AEE. Staff of all three councils estimate that they had to request further information from at least half of all applicants before the application was accepted (see Table 3.2; for Upper Hutt, the figure of 37% does not include cases where applicants were requested informally to supply further information, rather than formally under s 92 of the RMA). This may be a conservative estimate as examples were sighted from both Upper Hutt City and Marlborough District which were considered deficient in terms of information supplied, but which had been accepted by council staff. Marlborough District Council staff observe that applicants are often unwilling to assist once they have lodged their application, and suggest that applicants interpret the assessment as being "owned" by the council rather than themselves. Upper Hutt is the only council studied to keep a record of requests for further information from applications under s 92. This is a useful practice to aid councils' monitoring of the adequacy of information supplied by applicants.

As a key element of the resource management regime, an AEE ought to describe the anticipated effects of an activity with "sufficient particularity" so as to enable the functions which depend upon it to be performed.[30] The functions referred to by the Planning Tribunal in

[30] *AFFCO NZ Ltd v Far North District Council (No 2)* [1994] NZRMA 224.

AFFCO (No 2) were the provision for persons making submissions about applications to state reasons and the general nature of conditions sought (s 96), the duty imposed on the consent authority to have regard to the effects of allowing the activity (s 104), and the power conferred on a consent authority to impose conditions on a consent (s 105). It is the responsibility of the consent authority to ensure that the AEE is adequate before the consent authority proceeds to consider whether or not the application should be publicly notified (ss 93 and 94). It is the applicant's duty to make sure that all the information concerning the effects of the activity is made available to the consent authority.[31] In *AFFCO (No 2)* at p 235 Principal Planning Judge Sheppard observed that:

> "[G]ood resource management practice requires that sufficient particulars are given with an application to enable those who might wish to make submissions on it to be able to assess the effects on the environment and on their own interests of the proposed activity. Advisers to consent authorities and would-be submitters should not themselves have to engage in detailed investigations to enable them to assess the effects. It is an applicant's responsibility to provide all the details and information about the proposal that are necessary to enable that to be done."

The Planning Tribunal has held that "reasonable compliance" with s 88(4)(b) of the RMA is sufficient (and therefore adequate).[32] If there is not reasonable compliance the council may either request further information (s 92) or decline the application and require the applicant to recommence the application process.

It is not sufficient to merely produce a management plan;[33] the purpose of AEE is to identify issues sufficiently to alert interested parties to any potential problems. According to a recent decision of Judge Kenderdine, in order to be adequate an AEE must be sufficient to alert interested parties such as neighbours and public interest groups to the nature of the proposal and to enable an assessment of its likely impact on the environment. The AEE will only be held to be inadequate if it is seriously deficient or deliberately misleading.[34] The *Hubbard* decision reflects a more flexible approach to the adequacy of the information accompanying an application.

Section 92 enables a consent authority to require additional information from the applicant at any reasonable time before a hearing, or to commission a report on matters raised in the

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31 *AFFCO (No 2).*

32 *McFarland v Napier City Council* (1993) 2 NZRMA 440.

33 *Scott v New Plymouth District Council* W91/93.

34 *Hubbard v Tasman District Council* (W1/95, 14/2/95).

application, which may include a review of any information provided, including the AEE. Officers of the consent authority will have to review the AEE in any case before they can advise the consent authority as to whether or not it has adequate information upon which to base a decision.

Hubbard and *McFarland v Napier City Council*[30] both confirm that the role of auditing the adequacy of an AEE belongs to the consent authority, individual submitters and ultimately the Planning Tribunal. This may mean that the consent authority has to fall back on its powers under s 92 and that submitters will need to obtain expert advice in order to inform themselves sufficiently to make useful submissions. While it is practical not to apply so strict an interpretation to the requirements of the AEE that an applicant will always need expert assistance, there will be a greater need for expert assistance on the part of submitters if they wish to participate in the process.[31]

In 1994 the Marlborough District Council Hearings Committee nullified several applications because of the inadequacy of supporting material. More recently the Hearings Committee, when requested by a submitter to defer a hearing so that evidence submitted on the day of the hearing could be further studied, also ruled that it would not defer a hearing once the application was accepted and notified. These decisions confirm the important onus on staff of all councils to ensure that information supplied with applications is adequate and complete to the standard of s 88(4) of the RMA.

5.2.2 Notification

Staff of all councils have experienced pressure from applicants to treat applications as non-notified, so as to avoid the extra costs and time incurred by holding a public hearing. In some instances, for example as in Marlborough and Upper Hutt subdivision cases, the decision on whether or not to notify has been controversial. It is important therefore that councils have a clear and robust process for deciding whether or not to notify. All councils delegated the decision on notification to staff, although the level of this delegation varies from Chief Executive Officer (Upper Hutt) to Senior Consents Officer (Marlborough). Informal council policy in both Waipa and Marlborough is that if there is a doubt about whether to notify, the decision should be to notify.[32]

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30 (1993) 2 NZRMA 440.

31 See also comments by Clare Sinnott and Claire Woolley in a casenote on *Hubbard* in [1995] Butterworths Resource Management Bulletin 127.

32 This policy is consistent with the recent Planning Tribunal decision in *Brookes v Queenstown Lakes DC* (C81/94, Judge Skelton).

Decisions not to notify resource consent applications form a significant proportion of all complaints against local authorities received by the Office of the Ombudsman. Generally the complaints have been upheld, with the Ombudsman finding that the local authorities concerned failed to carry out sufficient enquiries before deciding that there were no affected parties or that it would be unreasonable for the applicant to obtain written approval from affected parties.[33]

Criteria for decision-making on notification are laid out in s 94 of the RMA. Although decision-making involves several tests relating to status in the operative plan and consent from affected parties, the main focus of judgement required is upon whether or not the effects of the proposed activity are minor. It would be helpful to have further written criteria for making this assessment;[34] of the councils studied only Waipa District Council has such criteria, as contained in its Policy Manual (policy 2.3.3). Criteria include consideration of discharges to air, land, or water; noise and vibration; council services required; whether prohibited in Plan; traffic and signage considerations; lighting and glare; whether possibly affected parties have given consent, and reference to Part II of the RMA.

5.2.3 Standard of council analysis

All consent hearings use as their basis a staff planner's report which normally includes sections on statutory and planning framework, confirmation of consents from affected parties if not notified, or listing and summary of submissions if notified, an evaluation of the application and AEE, and a conclusion, which may or may not include a recommended decision and set of conditions. Planners' reports in the three councils studied followed a fairly similar format. Attached to the planner's report are the application and supporting material, as well as copies of all submissions. The planner's report is thus the most important source of information for decision-makers on resource consents.

All three councils performed at least adequately in terms of efficiently processing and reporting on applications. Efficiency in processing and reporting is of course substantially different from a quality measure of the content of reports. In all the councils studied, planners' reports were generally of an adequate to good standard in terms of allowing decision-makers to evaluate the application under s 104 of the RMA. However, some shortcomings were noted in the quality of planners' reports in all the councils, as detailed in the accompanying case studies. The main deficiencies encountered were:

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33 Sir Brian Elwood, Chief Ombudsman, pers. comm., June 1995.

34 The Commissioner has also recently recommended that future regional Land Management Plans contain such technical criteria to guide decisions on notification of land use consent applications for burning in the South Island tussock grasslands (Parliamentary Commissioner for the Environment 1995).

inadequate technical evaluation of biophysical effects, such as ecological effects, potential erosion or soil impacts; a few instances of insufficient evaluation of effects on infrastructure and council services; and over-reliance on applicants' information and interpretation, or, in one example, submitters' views, without checking. In contrast, evaluation of statutory planning aspects and the summary and evaluation of submissions received were generally thorough and sound.

The net combination of strengths and weaknesses in planners' reports suggests an important distinction between **adequacy of coverage** and **accuracy of content** of an AEE. An AEE may be quite adequate in terms of listing and covering all possible effects, but if either the information content of the AEE is erroneous or its analysis not rigorous, then the assessment may be fundamentally flawed. Technical evaluation of the AEE may be assisted by the development of a guide or checklist for staff planners, its contents reflected in the evaluation section of the report. As with information to applicants, such a checklist could be specific to the type of consent sought.

Good planners' reports were observed at all three councils, including the quarry report in Waipa District, the Wairau Plains subdivision and Port Underwood logging applications for Marlborough and the rest home land use application in Upper Hutt. Waipa was the only council to use a consultant planner in areas where council staff do not have relevant expertise, which in the example studied resulted in an excellent report that paid particular attention to adverse effects and mitigation measures, based on expert knowledge. However, some other Waipa reports placed too much reliance on the submissions of affected parties to identify potential adverse effects and mitigation measures, instead of basing these on the applicant's AEE and planner's analysis. Such an approach is open to inconsistencies, especially when dealing with non-notified applications.

It is likely that the quality of evaluation is partly dependent on planners' workloads. Waipa has a stable planning staff and a relatively stable planning environment, although workload has increased greatly in the last 12 months. Upper Hutt has a much lower number of applications, and both planners and members of the Development Coordination Committee try to inspect all sites of proposed activities, a practice they feel shortens the time taken by the Committee in subsequent meetings. Marlborough processes a far greater number and variety of consents, and because it has an expanding and probably somewhat less experienced planning staff, it is understandable that they appear to be under more pressure.

The relative strengths and weaknesses may well reflect the professional training of the resource planners involved. However, perhaps as a further reflection of varying work-load demands, councils also differed from each other in their procedures for control

of and responsibility for planners' reports. In Waipa (generally) and Upper Hutt (always) the District Planner checks reports. (In the case of Upper Hutt the District Planner signs out reports and the Director of the Department then approves them.) In Marlborough, although the Senior Management Committee approves all reports, there appeared to be no routine process for checking of reports, beyond good cooperation between members of the planning staff. A more systematic approach may be preferable.[35] A "quality control" check would not only provide consistency, but also an independent scrutiny of the qualitative assessments which must by necessity form a major part of resource planners' work. Such independent scrutiny is the only opportunity to corroborate assessments of non-notified applications before councillors make their decision.

In the course of evaluation and report preparation, council officers may consult with affected and interested parties, but the consent authority may not. The Planning Tribunal has emphasised that where council officers consult they do not do so on behalf of the consent authority, but merely as officers for the purpose of obtaining information which can be relayed back to the consent authority in a report.[36] The council officers' reports are open to all parties to accept or contest. By analogy, where council officers advise intending applicants, that advice is not given on behalf of the consent authority, which must be in a position to make its decision on the basis of **all** the evidence presented. Advice given by council officers to applicants will not be binding on the consent authority. Any report presented to the consent authority by council officers is subject to that same scrutiny and is open to challenge, as is the information presented by all submitters.

The RMA has undoubtedly placed greater requirements on applicants, planning staff, and councillors in making and evaluating resource consents. Councils appear to have raised their evaluation standards. For example Waipa staff contrast their present standards with "back of the envelope" evaluations carried out in the recent past, and Upper Hutt staff observe that they no longer accept "no effects" statements in applicants' AEE without corroborating evidence.

This is encouraging. **The full evaluation of AEE information provided by applicants is one of the most critical aspects of the entire resource consent process. The applicant is responsible for providing a full assessment of the proposed activity, but such responsibility is meaningless unless a council provides guidance and, where necessary, forms judgements on the adequacy of this assessment.** Regular liaison between council staff and groups of

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35 Hamilton City Council, as part of an ISO accreditation programme, has instituted a formal quality control process in the unit which issues resource consents.

36 *Rural Management Ltd v Banks Peninsula District Council* [1994] NZRMA 412.

consultants, including lawyers, planners, surveyors, engineers and environmental consultants, would help to clarify processes and expectations, and ultimately improve standards, for consents prepared by consultants.

The three sequential stages of guidance to applicants, applicants' environmental assessment, and council's evaluation of the assessment are all closely linked. Councils rightly rely on information in the AEE as the basis of their analysis, although in some cases they may need to extend that basis for their evaluation, particularly in the case of cumulative effects (see below). However applicants, especially for smaller `one-off' projects, rely in turn on advice from staff when making their application and scoping their AEE. Thus at all levels the input of council planners is crucial to the usefulness of AEE in the resource consent process.

5.2.4 Evaluation of cumulative effects

Under the "sustainable management" regime of the RMA the evaluation of cumulative effects is a specialised and critical area to which councils should give great care when evaluating AEE information. *Cumulative effects assessment* is a process that recognises explicitly that, in any given area or region, the effects of a particular activity may be environmentally acceptable but that the effects, over time, of many activities, may not be acceptable (Conacher 1994).[42] Cumulative effects may also include future effects which are inevitable and predictable, such as where a certain consent pattern is established.[43] In *Manos and Coburn v Waitakere City Council*[44] the Planning Tribunal considered that unacceptable cumulative effects on the rural environment would inevitably follow if the local authority accepted the general principle that light industrial uses were to be regarded as appropriate in a rural zone. Cumulative effects may occur where similar applications would follow and be difficult for a council to resist.[45] Where a proposal involves applications for more than one resource consent, the local authority must consider the cumulative effects of all the consents, if granted.[46]

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42 The concept of "cumulative effects" is discussed in *Berhampore Residents Association v Wellington City Council* (W54/92) and in *Cash v Queenstown Lakes District Council* (1993) 2 NZRMA 347 (PT). In *Cash* it was found that any increase in the number of jet boats using the lower Shotover River compromised the safety of other boat users. The effect of each additional boat and trip, while small in itself, was cumulative in its effect on the existing boats.

43 The granting of a consent in a rural area without an associated rural reason for it could have flow- on results: *Heigl v Porirua* CC W64/92.

44 (1993) 2 NZRMA 226 (PT).

45 *Lee v Auckland City Council* [1995] NZRMA 241.

46 In *Burton v Auckland City Council* [1994] NZRMA 544 it was held that where several consents are required for the same project the AEE should take into account the relevant cumulative effects of the development as a whole.

Cumulative effects should not be judged solely on the effects an activity would have on the zone for which it was proposed. The cumulative effects caused by the loss of that activity to zones where it was positively encouraged were also a consideration.[42]

An individual applicant is often not in a position to adequately assess the effect of one proposed activity in relation to other activities, but this aspect of the assessment is something that, in the public interest, must be attempted in the council's evaluation.[43] It is much easier for a council to provide an evaluation of cumulative effects if effects-based Regional and District Plans lay down a framework and spell out some "bottom lines" or carrying capacity for activities which impinge on critical resource management issues. Without this framework, applying the precautionary principle would necessitate exercising a very restrictive approach to all resource consent applications involving significant cumulative effects.

Cumulative effects considerations apply in the evaluation of several subdivision examples studied (see 5.1.3). In Marlborough the critical issue in the Wairau Plains subdivision issue was the cumulative effects of subdivision on productive soils leading to long-term loss of productive capability, and both the applicant's AEE and the Council evaluation analysed this aspect very carefully. The direct environmental effects of a single subdivision application are often small but may be significant by creating a significant cumulative effect on land use, infrastructure requirements or other significant factors. However, in the rural subdivision in Upper Hutt, the applicant claimed that the proposal was not affecting the potential for productive use in the surrounding area and was therefore consistent with the Transitional District Plan. Thus neither the applicants AEE nor the council's review appeared to consider the cumulative effects of the proposal, despite some apparent concern that subdivision into small units would have a detrimental effect on the economic viability of full-time farms in the area.

Cumulative effects of more direct environmental effects such as noise, odour and stormwater discharge, also need to be taken into account in applications for other types of subdivision, industrial developments, discharges etc. To some degree conditions restricting the density of the proposed activity may be address these types of effects, by attempting to slow down or dilute the effects of the activity.

One of the most critical issues facing resource planners in Marlborough at present is how to deal with the cumulative effects of large numbers of marine farm applications to occupy coastal space. In

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42 *Manos v Waitakere CC* and *Gardner v Tasman District Council* [1994] NZRMA 513.

43 Montz and Dixon (1993) discuss this in terms of moving from a project-oriented evaluation, which is virtually necessitated by the application process, to an environment-oriented evaluation.

Thomas v Marlborough District Council,[49] Judge Willy advocated a precautionary approach whenever the cumulative effects of a proposal are not easily ascertainable. He said:

> "Without knowing how much aquaculture the Marlborough Sounds can sustain or the effects present marine farms are having on the ecosystems within these substantially enclosed waters I believe a cautious approach to the allocation of more space for marine farming is essential."

Arguments in submitted environmental assessments that say in effect that "there are already lots of marine farms; one more won't make any difference" need to be assessed very carefully so the consent authority can establish where the limits to sustainable management should be set. Many important effects of marine farms, such as nutrient depletion, ecological impacts, effects on scenic and recreation values, and even on such factors as navigational hazard, need to be evaluated cumulatively in order to set those limits.

The nature of cumulative effects means that the range of affected parties might well go beyond the immediate neighbourhood of the proposed activity. Therefore, in general, **a prudent policy might be to notify whenever cumulative effects are deemed to be significant for an application, even if the adverse effects may appear to be minor on first analysis.**[50] This has been Marlborough District Council's policy with regard to all applications for coastal permits for marine farming.

5.2.5 AEE in relation to district planning

Several examples in the study reveal the difficulty of using AEE effectively in the resource consent process, if there are no district and regional plans prepared under the RMA. Undertaking an effects-based analysis under the statutory guidance of Transitional Plans, which are usually activity-based, can be likened to trying to fit a square peg into a round hole, and entails major efforts on the part of the planner in trying to reconcile different planning documents. The problem is often compounded by the fact that in many districts, planners have to work with a number of Transitional District Plans, and a single application sometimes straddles two plans. Waipa and Marlborough Districts have six and five Transitional District Plans respectively, which are to be consolidated into one and two District Plans under the RMA (in Marlborough, District Plans will also be Regional Management Plans and Regional Coastal Plans).

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49 W16/95, 21 February 1995, Judge Willy.

50 Notwithstanding that in one of the cases discussed above (the Wairau Plains subdivision) there was an arguable case made by the applicants why the application should not be notified.

New District and Regional Plans should be able to give specific guidance on AEE for different types of activities. Although as at mid 1995 about one third of district councils have notified new proposed district plans,[46] completion of a full set of new district plans nationally is some time away yet. During the transitional period there is also the problem that proposed plans prepared under the RMA, both district and regional, are frequently in conflict with operative transitional plans prepared under previous legislation, raising the question of the legal status of the specific provisions of such proposed plans.[47] Also, transitional plans may contain provisions contrary or inconsistent with the New Zealand Coastal Policy Statement. In some cases it may be worthwhile, as an interim measure, to include, by way of a Plan change, guidelines in Transitional Plans to assist the resource consent process under RMA.[48]

The forestry development example in Upper Hutt illustrates a further complicating factor. There, two similar adjoining blocks of land which were proposed for a single activity were in different zones in the Transitional District Plan. Within the previous planning decision framework which sought to influence the direction of development rather than to manage its effects, the council could impose conditions for mitigating adverse environmental effects on one block but not on the other. It would be illogical if situations like this carried over into new effects-based Plans.

5.3 Council as applicant

Given that service delivery is a core function of councils and in many cases requires consents, councils need to give special attention to their own departments' procedures for consent applications, so as to ensure that they receive independent scrutiny from the regulatory department and are seen to be fair. All councils had structures in place which promoted the separation of service delivery and regulatory functions. These were most highly developed in the case of Marlborough District Council, while still allowing the various departments to maintain good communication between themselves. A further good practice in Marlborough was that its Unitary Authority Code of

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46 C. Wells, Ministry for the Environment, pers. comm. June 1995.

47 The RMA does not discriminate between operative and proposed plans as to the relative weight to be accorded to them in respect of resource consent applications: see ss 9(1) and 104(1). Each application must be considered on its merits: *Hanton v Auckland City Council* [1994] NZRMA 289 and *Lee v Auckland City Council* [1995] NZRMA 241.

48 Where provisions of a transitional plan cannot be harmonised with Part II of the RMA, they must be disregarded: *Imrie Family Trust v Whangarei District Council* [1995] NZRMA 453. However, councils should construe the transitional plans in a pragmatic way so as not to destroy the integrity of the transitional arrangements: *Purification Technologies Ltd v Taupo District Council* [1995] NZRMA 211.

Practice included a section specifically devoted to resource consent applications for council activities and projects. In Upper Hutt, resource planners are sometimes assigned to another department to help that department develop a proposal and prepare its resource consent application(s). In such instances the planning officer plays no part in subsequent regulatory processes for the particular application. The public would better appreciate this separation if, when planning staff are assigned to assist a department in this way, they were identified as a planning consultant to the applicant rather than by their planning department title.

Public perception is frequently that a council will get its way over individuals. To forestall any such criticism, a council as applicant needs to use all available opportunities to fully acquaint the public at large and the affected parties with the project, its environmental effects and the council's reasons for decisions on the project. A council as consent authority should err on the side of caution, as Marlborough and Waipa District Councils have done, when considering not to notify, and have a wide view when identifying who are affected parties.

5.4 Consideration of alternatives

Some types of application specifically require consideration of alternative methods or locations to be considered as part of the AEE.[54] In turn, AEE can play an important role in the consideration of alternatives and can aid the transparency of decision-making, especially when a council is the applicant. In two examples studied where the council was the applicant, the Blenheim Sewage Treatment Plant in Marlborough and the Norbert Street bridge in Upper Hutt City, the consideration of alternative sites and methods became controversial.

In the Blenheim example, most submitters felt that there had been a lack of consideration of alternatives to the chosen option, even though the Council's brief to their consultants included investigation of alternatives and accordingly the consultants' first assessment of options included a broad range of possible alternative treatment methods and discharge sites. It cannot therefore be said that alternatives were not considered, right up to the time of the hearing for the discharge consent. However, the conclusion is that the two issues could have been better dealt with. The criteria for narrowing the range of options down to the one chosen were not explicit. More importantly, council's ability to choose between alternatives appeared limited because of the lack of any AEE undertaken for alternatives to the chosen option.

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[54] S 104(3) and cl 1(b) Fourth Schedule RMA. The provisions of s 104(3) do not normally apply in resource consent applications heard by a territorial authority.

In the Upper Hutt example, objectors also felt that the council had not considered alternatives to the chosen site or design options. Documentation of the planning process showed that the council had indeed considered alternative sites and had exercised sound reasoning in its choice of site. However this process was not a public one and more information about the council's process of choosing between alternatives might have enabled better public understanding of the reasons for the choice.

The above examples were both council applications, but the same principles would often underlie private applications which involved significant effects and large numbers of affected parties.

In summary, good practice for major projects would be that, before the final choice between alternatives is made, some degree of environmental assessment of the principal options (even though not specifically required by law) is undertaken, in order to allow the best informed decision-making possible. Furthermore, applicants should develop specific criteria for the choice of option, and, for council applications, the reasons for selection of the preferred option should be made public.

6. CONSULTATION WITH AFFECTED PARTIES AND RESOLUTION OF CONFLICT

6.1 Legal context for consultation by applicants

6.1.1 Applicant's obligation to consult

The assessment of environmental effects (AEE) plays an important role in identifying persons who may be interested in or affected by the proposal. The AEE should include detail of what consultation was undertaken with those persons identified as interested or affected and any response to the views of those consulted.[50] If the applicant simply said that no consultation had taken place and therefore that there were no views, the consent authority could commission a report under s 92 of the RMA, if it considered that the information was necessary to enable it to better understand the nature of the activity, its effect on the environment, and the ways in which adverse effects could be mitigated. That power, however, does not enable the consent authority to consult in place of the applicant.[51]

In *Greensill v Waikato Regional Council* Judge Treadwell commented:

> "Although there are no sanctions if an applicant does not wish to undertake extensive consultation an applicant for a consent in a sensitive area would be very unwise to brush aside extensive consultation because he would run the risk of the consent authority postponing notification of the application or the determination of the application or the hearing of the application (s 92(3)) until it is satisfied it had the information it required."

Judge Treadwell commented further that the Fourth Schedule does not state that an applicant *must* consult with affected persons, although it would often be unwise not to do so.[52] This view is supported by the introductory wording of cl 1 and 2 of the Fourth Schedule and ss 67(1)(f) and 75(1)(f). It appears that the list of matters in the Fourth Schedule is indicative of what matters should be included rather than directive and that councils may use their plans to guide applicants on the requirements for an AEE for different types of proposals (see 5.1.4).

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50 Fourth Schedule, cl 1(h).

51 *Greensill v Waikato Regional Council* W17/95, Judge Treadwell, 6/3/95.

52 Ibid p 8.

In *Aqua King Ltd v Marlborough District Council*[53] Judge Kenderdine discussed the nature of consultation required. She held that clause 1(h) requires more than just sending out notice of an application and seeking comment; it indicates that consultation is to be undertaken and that requires the applicant to respond to the views of those consulted. She quoted McGechan J in *Air New Zealand v Wellington International Airport Ltd*[54] where he stated

> "Consultation must be allowed sufficient time and genuine effort must be made ...
> To consult is not merely to tell or present .... Consultation is an intermediate situation involving meaningful discussion."

Justice McGechan found implicit in the concept of consultation a requirement that the party consulted will be adequately informed so as to be able to make intelligent and useful responses. The party consulting, while quite entitled to have a working plan in mind, must have an open mind and be prepared to change. Consultation is to be a reality not a charade.

In *Aqua King*, Judge Kenderdine held further that where an applicant had not consulted or had consulted inadequately the consent authority may require the applicant to consult or consult further in order to provide further information requested under s 92. The decisions in *Greensill* and *Aqua King* suggest that although consultation is not mandatory under the Fourth Schedule, a consent authority may use its power under s 92 to require an applicant to consult or consult further with persons affected. Failure to consult at an early stage could delay the application process.

In respect of a request to change a plan and the effects assessment required under Part II of the First Schedule, a consent authority may seek further information from the requester which may include information about "the nature of any consultation which has been undertaken or required to be undertaken". A consent authority is to be satisfied that it has adequate information before it considers whether notification of the application is required, either by s 93(1) of the RMA or under the consent authority's discretionary power (s 94(5)). A recent High Court decision establishes that the quality of consultation is a factor relevant to the decision to notify an application or not, on the basis that adequate consultation meant that adequate information had been provided by the applicant.[55] In *Worldwide Leisure Ltd v Symphony Group Ltd*, Justice Cartwright said

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53 W19/95, 28/3/95.

54 Unreported decision of the High Court, McGechan J, CP 403/91 Wellington Registry, 6 January 1992.

55 *Worldwide Leisure Ltd v Symphony Group Ltd* [1995] NZAR 177.

> "Consultation will be successful only when those consulted themselves have adequate information on which to signify reasoned consent."

In this case the High Court found that it was necessary for the district council to obtain the written consent of the tangata whenua or notify the application publicly.

The RMA provides for a simplified consent process where affected persons have agreed to give their approval to the proposal, in that the application may be considered and decided without the need for it to be notified. Affected parties are most likely to give informed approval if the proposal has been discussed with them.

On the question of obtaining the approval of affected persons the Planning Tribunal, in *BP Oil New Zealand Ltd v Palmerston North District Council*,[56] has expressed the opinion that it is not its concern if approval was obtained by unconscionable (that is unfair) means. In that case BP Oil effectively bought the consent of an affected person, but the Judge acknowledged that the RMA allowed the applicant to do so. It is likely that the responsibility falls on the affected persons to ensure that they have all the relevant information before they give their approval. If the applicant has not made full and accurate information available to the persons potentially affected he or she takes the risk that such persons will withdraw their approval prior to the hearing (if there is one), or the decision, or that the resource consent could be invalidated through judicial review proceedings taken in respect of the decision not to notify.[57] In judicial review proceedings, the affected persons could argue that they had not actually approved the proposal since they did not have full and accurate information about the proposal and that therefore the consent is invalid because it should have been dealt with on a notified basis. The RMA contemplates the withdrawal of consent by written notice to the consent authority prior to the hearing or the decision (s 104(7)).

6.1.2 Consultation with Maori

The RMA encourages consultation as a way of resolving disputes between applicants and affected parties and, in respect of notified applications, it provides for pre-hearing meetings for this purpose.[58] In some circumstances the persons affected who must be consulted will include Maori, but otherwise applicants have no special responsibility to consult Maori. In *Aqua King* Judge Kenderdine

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56 W64/95, Judge Treadwell, 24/5/95.

57 *Worldwide Leisure*.

58 Section 99.

referred to the two stages of consultation under the RMA where there are issues of moment to Maori

> "They are the applicant's consultation or otherwise under the Fourth Schedule, and the council officers' consultation under Part II of the Act which arises from the principles of the Treaty of Waitangi 1840. That consultation is an obligation which pertains only to councils."

The High Court in *Quarantine Waste (NZ) Ltd v Waste Resources Ltd*[59] expressed a similar view to the effect that the statutory and Treaty obligations to consult with Maori fall on the consent authority, and not on the applicant.

Council officers will need to consult with tangata whenua (as required by Part II) so that they are in a position to check whether applicants have identified relevant iwi among those persons affected and the actual and potential effects on the iwi. In *Aqua King*, which involved a marine farming proposal, it was held that the concerns of iwi about their coastal waters, and the use to which they are put, come well within the definition of the effect the proposal may have on the environment. This decision illustrates the type of effect which is relevant, when considering whether iwi are an affected party who need to be consulted. Where other matters of particular concern to Maori may be affected by an activity such concerns may also be effects on the environment for the purposes of AEE.

6.1.3 Persons interested or affected by the proposal

A council as consent authority has the discretion to decide who is adversely affected. If an applicant has not consulted all the persons whom the council considers may be adversely affected, the council may require that the applicant go back and do so.[60]

In the context of judicial review proceedings, the High Court has held that a liberal approach should be taken to determine who is adversely affected in a matter where an environmental concern has been raised.[61] In *Carter v North Shore City Council*[62] the High Court found that to succeed in challenging a consent authority's decision on who is a person affected, the plaintiffs needed to demonstrate that the consent authority acted irrationally in limiting its recognition of certain persons. Both these cases were judicial review proceedings challenging a council's decision not to require notification, on the grounds that the applicants (in the judicial review proceedings) were

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59 [1994] NZRMA 529.

60 *Aqua King*.

61 *Quarantine Waste (NZ) Ltd v Waste Resources Ltd* [1994] NZRMA 529.

62 M1112/93, Anderson J, HC Auckland, 10/5/94.

adversely affected by the proposal. It appears that the matter of who will be considered as adversely affected will be left to be determined on the facts of the particular case before the courts. In *Carter* the High Court indicated that an adjoining owner will not be adversely affected simply because of the magnitude of the development. On its own, loss resulting from commercial competition is not an adverse effect.[63]

6.2 Consultation process

6.2.1 Nature of consultation process

Consultation is a process which helps the applicant identify and address community, tangata whenua and neighbour concerns about their proposal. This consultation, which may consist of a series of contacts with some parties, should be reflected in the AEE which the applicant prepares.

In the case studies, council staff actively promoted good public consultation practice to all potential applicants and, in some of the examples studied, applicants approached large numbers of potentially affected parties for their permission. However substantive *consultation* in the sense discussed in 6.1.1 has not been very evident. Often "consultation" appears to consist simply of the applicant informing near neighbours of the proposal and seeking their written approval for it to proceed.

Rarely was consultation seen as a process that requires recurring contact and feedback over a period as the issues of environmental effects and mitigation are worked through into a final proposal. For this to occur potentially affected parties need to be given time to peruse information provided by the applicant, discuss mutually agreeable mitigation measures, and to consider whether they wish to grant their written approval.

In one case study example it appears an objector to a proposal whose concerns could not be resolved, anticipated that the offers of mitigation that were made, would be carried out despite his continued objection to the proposal. This was not the view of the applicant. Participants in consultation need to record the matters on which they reach agreement and their intentions with regard to the project so both the applicant and the affected person are clear on the outcome of the consultation.

Case study examples indicate a greater need for compromise on both sides with open and fully informed consultation directed towards a "win/win" situation and not one of "winners and losers".

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63 *Worldwide Leisure* and s 104(8) RMA.

Ministry for the Environment (MfE) publications highlight that consultation will need to be recurring and ideally should be initiated early in the consideration of a proposal. Local people can be very useful in helping shape an AEE before it is carried out and later their reactions to predicted effects can be assessed as part of the evaluation of the significance or acceptability of changes as a basis for a decision on an application.

6.2.2 Identification of affected parties

Staff in each of the councils studied advise applicants of the need for discussion with neighbours and affected parties, and the requirement for their application to be notified if the written approval of parties the council, as consent authority, deems affected is not obtained. Staff offer guidance on who should be consulted, including tangata whenua, but to a large degree the initial identification of "affected parties" is up to the applicant who generally has very limited guidelines. Marlborough District Council maintains a publicly available list of 60 groups (including iwi, industry, residents, recreational and environmental groups), against which its staff check every application for potential groups for consultation or notification. One apparent lack in Marlborough's list is the absence of any local environmental groups, e.g. the local branch of the Royal Forest and Bird Protection Society (RFBPS) and the Marlborough Environment Centre. Upper Hutt City Council has recently acceded to a RFBPS local branch request to list the branch as an affected party to ensure council staff advise applicants to discuss their proposals with RFBPS when appropriate.

To meet the information requirements suggested by cl 2 of the Fourth Schedule on matters which an application should consider, an applicant will need to undertake fairly wide consultation to assess "*Any effect on those in the neighbourhood and, where relevant the wider community...*".

Councils ultimately have the final decision on how adequately the applicant has identified affected people and this continues to be a matter of contention for both sides - the applicant sometimes feeling the net is too wide and members of the community in the case of non-notified applications feeling the net is not wide enough.

6.2.3 Time available

Once the groups or individuals with whom consultation should take place have been identified, the applicant should provide sufficient time for the consultation and information assessment process. This means recognising the time involved in an iwi consultation process and the time affected people need to consider a proposal and review the information provided. It was apparent from this study that some applicants expected affected people would make an almost instantaneous decision when the applicant sought their approval for a

proposal. In the early stages there should be no constraints, within reason, on the duration or frequency of consultation.

Despite an applicant's early provision of accurate information, affected parties have a responsibility to make the time to check this information before they decide to support or object to a proposal.

Some objectors raised the concern that further information gathered on behalf of applicants in support of their application might only be available on the day of the hearing, and thus not available for scrutiny. Applicants may have gathered information specifically in response to points raised in submissions or a pre-hearing meeting and this information could affect the hearing significantly. Such last minute availability of information limits the ability of submitters to prepare a response. Applications can be declined because of the nature of evidence brought to the hearing without the opportunity for scrutiny by the other parties. In such instances there is a good case for adjourning a hearing if there is a genuine desire to find agreement on the assessment of environmental effects and their management.

Authorities have considerable flexibility in creating time for more detailed consideration of an application. At any reasonable time before a hearing, they can commission a report, or require the applicant to supply further information, possibly as a result of questions from submissions or a pre-hearing meeting; or they can postpone the hearing. They must then make the report and/or information available at least fifteen working days before the hearing (s 92). Section 39(1) requires councils to establish hearing procedures which are fair and appropriate and these could include policies for handling information provided at the last minute before a hearing.

The RMA defines response times for various stages of the consent granting process once a council has accepted an application. All parties need to be aware of these response times and recognise their responsibilities to work with these times.

6.3 Consideration of resources valued by tangata whenua

Under RMA s 104 decision-makers need to have regard to Part II of the Act and to any national and regional policy statements and plans which refer to values held by Maori and the principle of kaitiakitanga.

Waipa and Marlborough District Councils have developed structures which provide for resources valued by tangata whenua to be considered in resource consent matters (Table 3.3). In Waipa, where there are three iwi, consideration occurs through a hapu-based umbrella group which checks all applications and may advise recourse to s 92 provisions if the group thinks better consultation is required to determine effects. In Marlborough, where there are eight iwi, a

Maori representative sits on the Resource Management Committee and also nominates the iwi which should be consulted for all relevant applications.

Waipa's system works particularly well and appears capable of further development because the hapu-based group wishes to be more proactive and involved as an equal partner in planning issues. The group's goal is to ensure that environmental quality is not degraded and ideally gets better. In Marlborough the process has also worked efficiently and decisions on Maori consultation are being made by Maori. A few problems with the process have occurred, but most related to iwi matters well outside the Council's jurisdiction. In contrast, Upper Hutt's consultation with iwi is on an individual case by case basis. The Upper Hutt City Council fully recognises the need for consultation and has made efforts to achieve this goal. It has established a good working relationship with the urban Orongomai Marae, and has a contact for the local iwi authority. However the council does not accept the local iwi's stance that it will only enter into consultation with council on a paid basis. The Council contends that historically the level of Maori activity was low in this part of their rohe, and the proportion of Maori in the community (approximately 10%) is significantly lower than the regional average.

One consultant has stated that he would advise clients to alter their proposals to avoid the need for consultation with iwi. This indicates a significant level of uncertainty about how Maori concerns might affect a proposed activity. Clearly the council needs to provide more information and guidance in this respect.

A general concern of iwi is the less tangible matter of council processes and decisions recognising Maori values. Iwi representatives have pointed out that this comment is made in the context of rising Maori expectations of participation in resource management through the Resource Management Act (Part II) and other recent legislation. Maori are concerned that non-Maori decision-makers might take a narrow interpretation of the phrase "subject to Part II" in s 104 when they consider an application under ss 104 and 105. These sections of the Act do not mention iwi specifically as a required consultation party. There is also concern that the general public and applicants have a poor understanding of RMA requirements to ascertain matters of concern to tangata whenua. Iwi consider there is a tendency for applicants and others to think of iwi as just one more interest group among several others. Yet, in some instances iwi specialist knowledge may be required by applicants to meet RMA requirements, especially in terms of identifying environmental effects of concern. It would be useful if councils added an explanatory sheet to the resource consent application form to improve public understanding of consultation, especially iwi consultation issues.

A special concern to tangata whenua throughout New Zealand is the identification of waahi tapu (a sacred site, which typically includes burial grounds and sites of historical importance to the tribe). Waipa's District Plan shows sites recognised on Historic Places Trust/Department of Survey and Land Information (DOSLI)/Archaeological Society registers, in order to give some guidance as to the location of waahi tapu. In Marlborough the consent authority encourages applicants to consult these registers. However, it is generally recognised these data bases are far from complete. In Upper Hutt little work has been done on identifying waahi tapu areas. The council is awaiting a response to a request for local iwi, as a consultant, to carry out research on this matter.

Most iwi are generally reluctant to specifically identify waahi tapu locations. One suggested option is for iwi to shade in key areas of iwi interest on district or other management plans to alert applicants that iwi consultation prior to application would be advisable. The Marlborough District Council does not favour this approach and has suggested that it is a matter for the iwi to define in their own management plan. A common practice for consent conditions for applications that involve land disturbance is to include a requirement that if any waahi tapu sites are unearthed, work should stop immediately and iwi authorities should be advised immediately.

6.4 Pre-hearing meetings

A recent Ministry for the Environment study identified pre-hearings as one bonus of the RMA which has helped smooth the resource application process by reducing conflict, shortening the hearing process and reducing costs for all parties (Ministry for the Environment 1994a). While it was suggested by some respondents in Waipa that the statutory time frame impedes pre-hearing meetings the legislation does allow up to 25 working days (plus extensions) between the close of submissions and the hearing.

The experience of Waipa, where such meetings are successful and commonly used, supports this view in contrast to its lack of use by the other two councils. Waipa staff are experienced in arranging and/or facilitating these meetings which they find useful.

Pre-hearing meetings are not common in Marlborough. In the one example where an informal pre-hearing meeting had occurred the Hearing Commissioner commented that it had been useful in setting conditions. Some groups welcomed pre-hearing meetings but council staff feel that they can be counter-productive and merely harden points of view. Negative feelings may be avoided, however, if meetings are properly facilitated. Generally councils do not provide extensive staff training in these skills. Council staff also understand

that objectors usually do not want to lose their right of appeal by agreeing to conditions before a hearing. Affected parties who give approval to a proposal under certain conditions can still protect their right of appeal by making a submission. Approval may be withdrawn, in writing, at any time before a hearing or consideration of an application.

Upper Hutt has had pre-hearing meetings only twice since 1991. In the example the meeting was useful for identifying the concerns of the two authorities to be involved in the joint hearing, and the options for a private individual whose concerns could not be resolved were clearly stated in the meeting record. While staff will arrange a pre-hearing meeting if one is requested, the council does not seem to actively promote the idea.

If pre-hearing meetings are to be useful, the consent authority should set them up carefully so as to ensure there is some agreement on agenda and objectives, with reasonably independent facilitation and full access to information. Any promises made during the meeting need to be thought through and honoured. Ideally the outcome of a meeting should be reported to the consent authority and that report then becomes part of the information the consent authority shall have regard to when considering the application. Staff may need to take the initiative in arranging pre-hearing meetings, including calling upon accredited facilitators. This does not mean that staff may not act as facilitators, so long as they can establish their credibility to do the job and they are not disqualified under s 99(2).[64]

6.5 Availability of information to interested parties

A pre-condition of effective consultation is providing adequate information to all parties. Under s 92 a council has the power to require better environmental effects information as a consequence of research and consultation by the applicant with affected parties. It appears councils are not using this power frequently enough to encourage good practice by applicants. In some examples councils appear to take on this task themselves by means of their staff's report on the application.

All three councils have "consent forms" that applicants may use when seeking the written approval for the proposed activity from people who may be adversely affected by the granting of the resource consent (affected parties) and in order to fulfil the conditions for non-notification under s 94. All three councils' "consent forms" have spaces for a very brief description of the project, and for the affected parties to confirm whether they have seen a plan and description of

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64 A person (from the consent authority) who is *empowered to make a decision* on the application may participate in a pre-hearing meeting with the agreement of the parties and the authority.

the proposed activity. The "consent forms" advise affected parties that their approval of the project will bar the consent authority from taking that persons interests into account in further consideration of the application (ss 94(4) and 104(6)). However s 104(7) provides for the withdrawal of approval before a hearing or determination of an application by written notice to the council.

In Waipa and Upper Hutt the use of these forms caused difficulties, mainly relating to the adequacy of information being supplied with the forms to enable affected parties to fully appreciate a proposal and its likely environmental effects. The "consent forms" clearly provide for sighting AEE and plans of the proposed activity, but it was not clear how much detail was provided in the information describing the project and its environmental effects. Guidelines for the provision of this information were not available.

The forms councils provide for recording the written approval of affected parties should include a clear statement of the councils interest in the form, (that is, state that they prepared the form to help applicants meet the non-notification criteria of s 94) and that the applicants need to show due care that they are not misleading parties about what they are being asked to approve.

At the preliminary stage of a proposal, prior to formal application, a full AEE has often not been prepared. This is entirely reasonable, since the consultation/approval process can identify concerns to be considered in the development of the AEE. Nevertheless, there is a good case for including a summary of a preliminary, scoping-type AEE at this stage. This should provide a starting point for discussion rather than any rigid proposal and could follow a standard format the council has devised, with space for the affected party to comment on concerns they would wish to see addressed in the final AEE and by way of conditions to the consent.

On some "consent forms" the affected party had placed conditions in terms of controls or changes they had wished to see made to the proposal. The legal status of such conditional approvals is unclear. The implication is that an issue was unresolved and an affected party had given its approval prematurely. A conditional approval is a useful device for the parties to establish issues of concern for further discussion rather than as an approval for the purposes of s 94, which may consequentially lead to non-notification of the application. If an applicant agrees to some variation of their proposal with an affected party, the applicant should amend the proposal and AEE in accordance with the agreed changes and then obtain the affected persons' unconditional approval.

Affected parties should only **confirm** their decision of whether or not to give written approval to a proposal on the basis of their inspection

of the final AEE and plans the applicant will submit to the consent authority.

Waipa District Council specifically provides a section on its form for conditional approval with details on the back of the form of the procedures the council will follow to deal with such cases. Upper Hutt City Council does not accept conditional approvals as valid. At present Marlborough District Council's "consent form" does not allow for suggested conditions. Suggested conditions must be made by way of submission, which in most cases automatically necessitates formal notification.

The suggestion that affected parties only confirm approval on the basis of the submitted application is a more formal requirement than at present. Current practice does not always clearly signify written approval under s 94, but it does enable (although it does not oblige) applicants to modify the proposal in the light of comments. However there still needs to be a procedure to allow a person who makes a conditional approval to confirm their acceptance of proposed amelioration before that person loses their rights under ss 94(4), 104(6) and 104(7) for non-notified applications.

Such a procedure could be possible if the council, once it has received a non-notified application, were to forward the application to those giving conditional approval upon receipt by the council with advice about their right to withdraw approval. A conditional approval must become unconditional (and be confirmed as such by the affected person) prior to the application being lodged, to obviate the need to notify the application.

Consultation and release of information should not be seen merely as legal hurdles. If all parties show goodwill, these processes can become an opportunity for all to have broad involvement in and take responsibility for the sustainable management which the RMA seeks to advance.

6.6 Public participation

6.6.1 Public understanding of AEE within RMA

There is general agreement among councils that general public applicants and objectors need to have a better understanding of the legal requirements and practical necessity of good AEE. Lack of understanding probably stems from insufficient appreciation of the basis of the RMA itself and the new effects driven rather than activity driven regime. Mulcock (pers. comm. 1995[65]) observes that a private individual owner typically does not understand the consent process and the need for an AEE. Many people are confused about

[65] C Mulcock; Regional Policy Analyst Federated Farmers of NZ Inc. Canterbury, 16/3/95.

what an AEE involves, how to prepare an AEE, and defining issues like scale and who is an affected party.

Major companies gained experience in applying for consents under the environmental protection and enhancement procedures (EP&EP) requirements of the 1970s and 80s. Private individuals were not part of this learning process. Mulcock has suggested that if an AEE was portrayed as an assessment of the risk posed to the environment by a proposal, the general public might more readily understand why it is required.

Public education campaigns for improved understanding are not likely to be effective in reaching the desired audience. Waipa District Council staff do identify and concentrate on individual applicants who come to the public counter. Target groups who may frequently come into contact with resource consent issues include chambers of commerce, surveyor and consultancy groups, environmental groups, and iwi. Any group that has some knowledge of the Act can be an asset for developing wider community understanding and as an education resource. The Marlborough Environment Centre is an example of a group which has built up a detailed knowledge of aspects of the RMA and has promoted local seminars on the Act.

While local councils may not see value in educating private individuals about the requirements of the RMA and AEE assessments, the possibility of joint community approaches with other organisations such as environmental groups, Federated Farmers and the Planning Institute might be more attractive.

6.6.2 Participation in hearings

A resource consent hearing is a quasi-judicial process but councils have wide discretion as to the form and tone of the hearing, and relative informality need not be at the expense of efficiency or natural justice (s 39(1)). Unfortunately a number of people who had appeared at hearings, usually objectors, felt that the atmosphere was confrontational and intimidating to lay people.

Concern was expressed about the introduction of new information on the day of the hearing, without the possibility of prior assessment by participants. This limits their ability to contribute meaningfully to the decision making process (see 6.2.3). Also a few people who had participated in hearings felt there could be more control on the relitigation or introduction of supposedly "new" issues which they felt had already been the subject of reports presented with the application or resolved in pre-hearing meetings. Consent authorities have discretion over how they deal with these concerns but it would assist lay people appearing at hearings if they were given prior information about a council's hearings procedures and practice, including how

they may participate and how and what evidence will and will not be heard.

6.6.3 Resourcing of submitters

Environmental groups and iwi, particularly in Marlborough, expressed serious concerns about their lack of financial resources to effectively take part in the resource consent process. Both groups affirmed the importance of their roles, the former from their perception of themselves as guardians of the public interest, the latter as a Treaty of Waitangi partner, and both groups as sources of expert information. This was probably the most serious concern that emerged from discussions with tangata whenua in Marlborough. In both Upper Hutt and Marlborough iwi identified a serious "submission overload", in Upper Hutt a consequence of the number of local authorities in the iwi's rohe. When the process is perceived to be adversarial, legal representation is important and this exacerbates the financial difficulties for iwi and community groups. Private individuals also expressed this concern.

Recent proposals from the Marlborough District Council to submitters regarding cost recovery for supplying full documentation of notified applications have caused concern and illustrate that submitters, applicants, and councils all have quite different expectations of the obligations of parties and where costs should fall.

Council policy is variable concerning iwi resourcing. Waipa's system for paying iwi for review improves input on iwi matters, although the remuneration only covers a fraction of the true cost. In Marlborough the council appears to be sympathetic to the iwi case for resourcing to enable it to participate in resource planning, but, nevertheless, does not see resourcing as primarily a council responsibility. Marlborough District Council has raised the matter with government and the Local Government Association on several occasions. In Upper Hutt the council is not prepared to pay for consultation but does recognise that an issue for detailed investigation may arise from consultation and could result in a paid consultancy relationship with tangata whenua. In the meantime the council and iwi authority are continuing to discuss this.

7 MITIGATION, MONITORING AND ENFORCEMENT

An essential purpose of AEE is to identify potential adverse effects so that they can be avoided or mitigated. For genuine benefit to result in the environment, consent conditions must be adequate to control the effects, and monitoring for compliance and enforcement must be effective.

7.1 Balancing environment and development

Table 7.1 summarises the extent to which the conditions set to control adverse effects in the main examples studied matched the concerns of the affected parties and, where the information is available indicates the actions relating to enforcement that occurred to ensure that adverse effects were avoided or mitigated.

All councils are making a genuine effort to meet concerns about adverse effects with conditions on consents. In addition, staff and councillors of all councils acknowledge that they do not wish to hinder economic development within their district. Decision makers are inclined in general to grant consent applications, and if there are concerns from affected parties or about adverse effects in the environment, then those should be addressed through setting conditions on the consent. Avoiding adverse effects by refusing a consent is rare (Table 3.2, 1-4% of total; and Table 7.1, one out of 15 examples studied). The setting and enforcing of conditions thus assumes great importance in resource consent procedures. The conditions are the principal means by which councils seek to ensure environmental protection.

7.2 Setting conditions to avoid or mitigate adverse effects

Conditions on resource consents are a vital means of mitigating adverse effects and of addressing those affected parties' concerns which the consent agency deems valid. Both individual consents and plans (see below) should maintain a balance between conditions that are specific enough to address concerns meaningfully, and sufficiently flexible to be practical and allow for individual circumstances.

A difficult matter is balancing wider issues of sustainable management with the concerns of affected parties, especially neighbours. These two sets of interests do not always coincide, such as in the siting of landfills or industrial sites.

In the Waikawa subdivision example in Marlborough, the application had little detailed AEE and the resource planner's recommendations failed to adequately address residents' concerns. After the hearing the Hearings Committee imposed a large number of new and/or tougher

conditions to better address residents' concerns. Despite appeal from the applicant, these conditions were confirmed by a Memorandum of Consent at the Planning Tribunal with only relatively minor changes.

In the examples studied, councils' decisions regarding conditions were generally a fair response to most of the identified concerns. On some occasions, however, the conditions of permits, such as for the Marlborough marine farm or the Waipa poultry shed, cannot meet concerns which in effect can, only be met by refusal of the application.

Not all conditions are attached to resource consents. Many are included in plans or environmental standards attached to plans. For permitted activities, such conditions are the only means of mitigating effects of activities on the environment, while for controlled, discretionary and non-complying activities, a council has the opportunity to design conditions that reflect the specifics of the case.

7.3 Monitoring and enforcement

While conditions may be set in response to concerns about adverse effects, there was considerable concern expressed about all the case study councils' ability to monitor and enforce these conditions effectively.

Planning and environmental health officers are officially responsible for enforcement of consent conditions after consents are issued, but in practice have little time to do so. The constant pressure for planners to process new consents, prepare a new district plan, and their natural reluctance to act as "policemen" means that their enforcement effort has been minimal. Environmental health officers who deal with such complaints as noise and odour also have a wide range of licensing and inspection responsibilities under the Health Act 1956 and Sale of Liquor Act 1989 (e.g. food premises, infectious diseases, liquor licensing) which take an estimated 80% of their time.

All three councils have a "complaints driven" monitoring and enforcement programme, apart from making occasional "blitzes" to check certain issues after the advent of the RMA, such as quarries in the Waipa District.

The case study findings are mirrored by a comparative study of environmental monitoring practice by six councils in the Waikato region (Otorohanga, Matamata/Piako, Waikato and Waipa District, Hamilton City, and Waikato Regional Councils), which the researcher found took a monitoring approach that was predominantly "reactive" rather than "proactive", and where 56% of compliance monitoring information came from "political" sources (public complaints). This comparative study also found that there was a strong staff

commitment to monitoring, but that monitoring was a low priority in terms of job descriptions and resources allocated (Devlin 1995).

Waipa and Marlborough District Councils have both recently hired new monitoring/enforcement staff, because they recognise that enforcement of consent conditions was "slipping by the wayside". In Marlborough, the early initiative by one staff member in compiling all conditions requiring monitoring related to water quality highlighted the enormity of the task and laid the groundwork for the council's upgraded compliance monitoring programme.

Upper Hutt City Council considers that many of their consents have built-in steps at which compliance can be checked, such as by a building inspector. Their Inspection Services Department could be allocated environmental monitoring responsibilities under the RMA if were deemed necessary to separate enforcement and licensing activities.

Although not one of the main examples initially chosen, the Hamilton Road motel case in Waipa deserves some mention in this context. After appeal of the council's decision, the Planning Tribunal added a requirement for a site management plan and various operational procedures to protect trees, but the council failed to enforce these effectively until neighbours complained. The council issued a stop work notice to require the plan, and then after further complaints an abatement notice when the plan was not followed. However, by this time some significant damage to tree roots had occurred. Affected parties who had taken the appeal to the Tribunal (at considerable cost to themselves and others) were understandably upset.

The council subsequently investigated the matter, and has concluded that contributing factors included ambiguous wording by the Planning Tribunal and site visits by council staff not coinciding with key construction events. The Council has proposed to ensure its own consent conditions are worded more precisely, to better coordinate site visits with applicants, and to include a charging regime for monitoring to ensure better resourcing for site inspections.[66]

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[66] Letter of 30 June 1995 from Trevor Loomb, General Manager Waipa District Council, to Mr. and Mrs. Snowdon of Cambridge.

Table 7.1 Summary of predicted adverse effects, conditions, and enforcement

*(NOTE: **Relates to District Council RMA responsibilities**. Concerns and conditions relating to Regional Council RMA responsibilities noted briefly in italics).*

Examples	Main concerns (submitters, council)	Project changes or conditions imposed	Enforcement
WAIPA DISTRICT COUNCIL			
Quarry	Visual impact Dust, noise (traffic)	Screening (trees) Speed sign; cooperation between parties	Revegetation plan received Sign up; *cooperation not occurring*
Poultry shed	Noise (fans, traffic) *(also: odour, vermin)*	Required to meet noise standards in Plan; acoustic plan for building consent. *(not to cause odour nuisance)*	(Unknown: sheds not yet built)
Factory (Scheme change)	Visual impact Noise Infrastructure	Site coverage (4.5%) and setback requirements. Controlled use consent later.	(Controlled use consent not yet applied for)
Subdivision (Pirongia)	Access, esplanade reserve "Suburban" frontage in rural area Poor drainage, septic tanks	Access and frontage issues disallowed. Plan amended to avoid worst drainage area.	--
Subdivision (Ngaroto)	Waahi tapu	Plan amended to avoid waahi tapu.	--
UPPER HUTT CITY COUNCIL			
Bridge	Visual impact Privacy Security of floodway	Location moved Fencing, planting screen Design changed	Planting and fencing carried out
Quarry	Visual impact Revegetation of site *(water quality, stream)*	Avoid major vegetation Recontour, replant often *(not work stream bed)*	Annual monitoring report by company
Afforestation	Visual impact Soil stability	Strip cutting on contour	--
Rural subdivision	Non-notification Social/economic effects	--	--
Rest home	Scale in relation to neighbourhood	APPLICATION DECLINED	N/A

MARLBOROUGH DISTRICT COUNCIL			
Marine farm	Visual aesthetics. *(also maritime safety, coastal nutrient depletion)*	Visual issue disallowed. *(Safety changes required)*	--
Logging	Erosion, sedimentation Traffic, noise *(water quality)*	Required to meet Land Disturbance Plan standards and practices, w/ some variations & additions.	Conditions specify regular monitoring by council.
Subdivision (Wairau Plains)	Protection of productive soils (minimum lot size) *(Council not affected party concern)*	Consent authority ruled that productive use enhanced.	--
Subdivision (Waikawa)	Stormwater damage and erosion from steep lands. Infrastructure needs.	Controls on stormwater and septic disposal, access, water supply.	(Unknown: not yet completed)
Sewage Treatment	AEE on alternatives. *(water quality)*	Trialling of wetland options possible future condition. Consent under appeal.	(Unknown: Plant not yet constructed.)

Perceived failure of the council to control adverse effects from related activities in the past contributed significantly to residents' opposition to new projects in three of the five examples studied in Waipa District. These cases were inherited from previous councils and perceptions of lack of enforcement both predated and were concurrent with the Waipa District Council. In the quarry case, council staff viewed enforcement activity as in excess of any other site in the district. Regardless of council action or the wording in consents and plans, however, there was continued experience of adverse effects by neighbours.

Whether the new monitoring/enforcement staff are sufficient to address the problem remains to be seen. Both Waipa and Marlborough District Councils initially hired only one person to monitor hundreds of existing consents as well as the several hundred new consents granted every year. Marlborough will be hiring a second monitoring and enforcement officer in 1995/96.

In Waipa, monitoring and enforcement will be assisted by the consents computer database. This provides the facility to record review/expiry dates of consents, receipt of bond documents, whether work required by conditions has been done, whether enforcement action has been required, and which monitoring checks are due. However, the council's complaints register currently records all issues, and is yet to be linked to the resource consents enforcement database.

Strengthening of compliance monitoring will be an important priority for the councils, as this aspect of the resource consents system is crucial for building public confidence in the system as a whole.

7.3.1 Monitoring programmes as conditions on consents

Conditions on resource consents cannot be enforced unless they are monitored. In Marlborough, a number of recent consent decisions have specified monitoring programmes on the effects of the consented activity, as a condition of the consent. Specified monitoring may be either carried out by the applicant under council review, or jointly by the applicant and council. This arrangement is in many circumstances more efficient and equitable than making the applicant liable for the costs of monitoring by the council.

These are useful developments which provide for collecting the information necessary to ensure that the resource consents procedures are working effectively, and they also give certainty to all parties. Furthermore the database generated by monitoring could provide an important source of information for future plan preparation or other resource analysis.

7.3.2 Reliance on complaints unrealistic?

In the case studies, some resource consents appear to have been granted in the expectation that complaints will alert the council to problems when or if they arise. Council officers have noted that for adverse effects that may be intermittent in nature (e.g. noise, dust, odour), constant monitoring by the council is not practical or realistic, and observations (and complaints) by neighbours is essential to the monitoring programme. Perhaps this should be formalised once consents are granted.

However, some persons contacted during the case studies noted that many people are reluctant to lodge complaints despite there being a genuine problem, because the complainants have to live as neighbours with the person causing the nuisance, and in some cases may be dependent on the goodwill of that person, e.g. for their water supply. It was noted that rural people especially tend to complain less in the interests of keeping the peace and receiving reciprocal consideration. This situation also appears to contribute to persons signing consent forms without adequate scrutiny of potential adverse effects. In contrast are a few cases where persistent complaints and pursuit of legal rights was alleged to have placed unfair costs on applicants.

If a council only seeks to enforce consent conditions when it receives a complaint, and those getting the most complaints get more attention, then in effect this may mean that once the consent is granted, adverse effects may thereby be imposed in perpetuity with no realistic remedy for people who are not inclined for whatever reason to complain officially.

7.3.3 Enforceability of consent conditions

In one of the Waipa examples, conditions attached to address dust and noise concerns are probably not fully enforceable by the council. This is an ironic situation, as the consent issued by the county council prior to the RMA also had unenforceable conditions. It is understood that councillors designed the current conditions in order to encourage the applicant and submitters to communicate and resolve issues of dust and noise from truck traffic, but planning staff had not suggested or been asked about the practicality of these conditions. In this case, given the present climate of mutual disrespect between neighbours, the spirit and letter of these consent conditions are unlikely to be upheld.

Waipa staff noted that in the past (pre-RMA) the wording of consent conditions often frustrated enforcement if consent holders did not adhere to the "spirit" of the consent. In particular, staff noted the lack of set deadlines or time frames, specified scale, and "catches" to ensure compliance.

Waipa councillors noted that they want to be seen to be helpful, but sometimes they place conditions that superficially appear to meet an objector's concern, but that in practice the council cannot monitor or enforce the condition effectively. Being seen to be mitigating adverse effects in consent conditions may not however be the same as actually mitigating them in practice.

The council staff in Waipa have noted that once all evidence is heard by councillors at a planning hearing, then it is not possible for councillors to seek further advice from staff about an application, apart from clarification of points raised during the hearing. They also report that this is a point about which councillors are concerned, but they still do their best to ensure that conditions are practicable and enforceable. No additional evidence should be accepted once the hearing is completed *except with the knowledge of all participants,*[67] which suggests that further advice about conditions can be sought as long as the information is shared with all parties.

7.3.4 Use of bonds to ensure compliance

In Waipa over the last two years, performance bonds and public liability insurance have been increasingly used as part of consent conditions. An extensive in-house exercise required the council's solicitors to clarify such practicalities as who can issue and be bonded. The quarry case is an example.

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[67] Ss 39, 42A(4) RMA; *Local Government in New Zealand*, Palmer 1993, p.610; *Denton v Auckland City Council* [1969] NZLR 256.

7.3.5 Awareness of old consent conditions by new owners

In Waipa, there were several reports of new owners only being aware of conditions on old consents governing the operation once their neighbours complained.

Consents and conditions may be brought to light if a project information memorandum is requested by ss 30-31 of the Building Act 1991, but this only applies where activity requiring a new building consent is contemplated. A land information memorandum under s 44A of the Local Authorities Official Information Act 1987 could provide the necessary information, but obtaining either document is a voluntary option, and perceived as expensive (at Waipa, currently $300 + gst). The council has recently invested in a GIS (geographic information system) system to streamline and improve the information base for the preparation of project information memoranda, and hopefully reduce costs in due course.

In the case of subdivision and related issues only, it is possible to register such information against a land title (s 221 RMA). This practice should perhaps be more widespread as new consents are granted, so as to avoid future problems. The Waipa District Council has used the s 221 provisions to note airport noise risk on a new subdivision, the presence of high voltage lines, special septic tank management requirements, and to note bush protection agreements.

8. SUMMARY OF FINDINGS

NOTE: These findings are a result of an investigation of three territorial authorities as case studies, and fifteen detailed resource consent examples. Given this small sample, the findings should be taken as indicative of trends rather than as fully representative of the territorial authority RMA experience nationwide.

8.1 Key findings

1. ***The councils have responded well to the challenge***

AEE as a requirement for all consent applications under the Resource Management Act was a new concept for local government. While some improvements are still needed, the councils studied:

- have implemented effective processes for managing their statutory obligations;
- use AEE information in deciding whether to notify applications;
- cite AEE information in reasons for their decisions;
- used the Fourth Schedule appropriately to request or assess AEE information (in keeping with the scale and significance of the proposal); and,
- have, despite heavy workloads (large numbers of consent applications processed by some councils and the demands of formulating new effects-based district plans), produced adequate and in some cases very good quality AEE analysis and consent decisions, which reflect a genuine concern to balance development and environmental protection.

2. ***Public understanding of RMA and good AEE practice is inadequate***

Although some community groups are well informed about the RMA and the importance of good AEE practice, the same cannot be said about the general public and many resource consent applicants.

Councils are providing some explanatory information with application forms (good practice but not required by law), but too many applications submitted to councils arrive without adequate AEE information.

3. ***AEE by applicants needs improvement***

The Councils studied are receiving a significant number of applications (37% to ± 50%) without adequate AEE information. Genuine early consultation with affected parties is rarely used as an ongoing process to design good mitigation measures for adverse effects. These failings suggest that either the applicant has not obtained council or other professional advice on what is required, has sought council advice but not understood or remembered it (advice is often given verbally at the public counter), or that council or other professional advice was inadequate. All councils studied provide a copy of the Fourth Schedule of the RMA with the application form, but it is a general guide only and does not help identify key issues and parties affected by the proposed activity.

One of the councils studied has AEE guidelines specific to the type of consent and where possible gives written rather than verbal advice to applicants, to enhance understanding by applicants and consistency of advice that is offered. This council also has prepared a list of community groups that may consider themselves affected parties.

The new effects-based district plans have the potential to give more specific AEE guidance in future if councils draft them adequately.

4. ***Councils need to ensure that "consent" by affected parties is fully informed***

Provision for affected parties to give written approval of resource consent applications is a new option under the RMA. Unfortunately there is evidence that some applicants are not adequately informing affected parties of the actual or potential environmental effects of their proposed activities. Councils have provided forms for applicants to use (good practice but not required by law), but forms and procedures need to better ensure that an adequate plan and AEE have in fact been available to and understood by affected parties before they decide whether to sign their approval.

5. ***Council evaluation of AEE adequacy could be improved***

Council evaluation of an applicant's AEE is to ensure that reliable and complete information is available to decision-

makers pursuant to s 104 RMA. To determine likely effects of proposals the councils rely largely on staff experience, the applicant's AEE, submissions from interested parties (*if* the application is notified; only 3 to 16% of total), and make site visits whenever their workloads allow.

In staff reports on applications, statutory planning aspects and assessment of compliance with District Plans are usually very well covered. However, in some cases there was inadequate evaluation of ecological and cumulative effects and the impact on communities from such adverse effects as noise and odour.

If a council does not have specific expertise, it can commission reports to assist its assessment of the AEE; however, only one of the three councils in the study used this option to good effect. Nonetheless, in most examples studied the council decision making process, including scrutiny of AEE, submissions and hearings, resulted in an adequate outcome.

6. ***Monitoring and enforcement must be adequately resourced***

Conditions attached to consents generally appear to be a fair response to concerns of affected parties and sustainable management requirements, but councils' ability to effectively monitor and enforce the conditions has been in doubt over the period 1991-1994 Pressure from statutory time frames and consent and district planning workloads has resulted in monitoring and enforcement having low priority and carried out in an ad hoc way, usually in response to complaints.

Two of the three councils studied have recently hired staff specifically for monitoring and enforcement, and one of the councils sometimes includes a monitoring programme, with annual monitoring fees, as a condition of consent. The adequacy of such initiatives will need to be monitored by councils.

7. ***Councils need to ensure that iwi concerns are understood***

The RMA does not require an applicant to consult with tangata whenua or any other affected party, but a council, as consent authority, has a duty to understand the concerns of tangata whenua so as to make informed decisions (Part II and s 104). This can also place the council in a position to be able to advise applicants which iwi may be considered affected parties.

One of the three councils studied has developed a good interim "safety net" procedure which ensures that the consent authority is aware of iwi concerns before it decides on consents, with costs partially paid from rates and consent fees. This council also uses statutory powers to good effect to encourage consultation between applicant and iwi to clarify iwi-related project-specific concerns. The other councils have not achieved this same degree of good practice, partly due to disagreement between council and iwi concerning payment for services, and other factors beyond councils' control.

8. ***The potential to clarify issues and resolve conflict through pre-hearing meetings has not been adequately realised.***

Only one the three councils studied actively encouraged pre-hearing meetings, and found it a useful mechanism. Not all parties are willing to relax their adversarial stances, but generally the experience has been positive and assists all parties in understanding likely effects and searching for acceptable mitigation measures. However, this council has found that statutory time frames prevent it from holding pre-hearing meetings more often.

8.2 Comparison of findings with earlier studies.

Some of the general problems reported on by Morgan (1993) were confirmed:

- uneven quality control particularly in regard to low public profile proposals, as a result of reliance on public scrutiny for determining adequacy of an AEE;
- too great a reliance upon advice of consultants who prepare AEE for applicants (inadequate resources for independent checking);
- little attention to cumulative and indirect effects; and,
- lack of awareness by the public of AEE purpose and requirements, including the necessity for meaningful consultation with affected parties.

The Ministry for the Environment's 1994 report on good practice in processing of resource consents (Ministry for the Environment 1994a) identified a number of necessary features for good practice, which the present study has found to be generally lacking. The identified features are:

- a willingness for the applicant to consult with the council and affected parties prior to lodging an application;
- full information on environmental effects in consent applications.

In comparison with the Ministry for the Environment's 1994 report on time frames (Ministry for the Environment 1994b), this report also confirmed that:

- councils have not established guidelines for identifying affected parties;
- applications from members of the public (as opposed to major industry or public authorities) were responsible for most requests for further information, particularly information relating to:
  - insufficient resources to provide the necessary information
  - inadequate identification of affected parties
  - insufficient council guidance on information requirements specific to a proposal.

8.3 Recommended "good practice" for councils

The following section lists specific examples of good practice, in addition to the more general points in section 9.1 above. The investigating team encountered most of these good practices among one or more of the councils studied, but a few are made in response to identified areas for improvement suggested to all three councils. These good practices may well be established in other parts of the country, and **by no means constitute an exhaustive list of all aspects of good AEE practice.** They are nevertheless **recommended to all councils for consideration in their operations.**

GOOD PRACTICE IS DEMONSTRATED WHEN:

Guidance to applicants

1. Early contact between applicants and council staff is encouraged; and written background information and guidance on AEE is provided with resource consent application forms, including:
   - AEE guidance specific to different types of applications;
   - guidance on the need and/or desirability of full and early consultation with affected parties including tangata whenua where appropriate;
   - guidelines which assist with identifying who are likely to be considered affected parties for particular types of application;
   - a summary of relevant guidance and good practice information issued by the Ministry for the Environment

(Section 5.1.2, Chapter 6)

2. Advice to applicants that is specific to a proposal, both prior to and after application, is made in writing and recorded on file.

(Section 5.1.2)

3. Regular contact is maintained with local consultants to address relevant professional issues such as what the AEE should contain, what staff guidance is available, and what should be expected from applicant and council.

(Sections 5.1, 5.2)

4. New plans developed under the RMA include guidance on what matters should be addressed in an AEE for different types of resource consent.

(Sections 5.1.3, 5.2.5)

5. Procedures for consent applications made by council departments are based on the separation of council's service delivery and regulatory functions.

(Section 5.3)

6. For projects where adverse environmental effects are likely to be significant, the council's evaluation of the application may include some environmental assessment of the principal alternative methods and/or sites, and guidance to applicants states that this contingency should be covered in the AEE.

(Section 5.4)

7. Council staff offer advice on whom applicants should consult as affected parties, and maintain a list of private and public organisations likely to have an interest in particular types of applications.

(Section 6.2.2)

8. Forms available for affected parties to grant their approval to applications:
   - make clear the legal implications of signing and the right of the affected parties to withdraw consent;
   - include a summary of the AEE; and
   - have a place to note whether the signing party has sighted the full and final proposal, including plans and the finalised AEE.

(Section 6.5)

Council review of AEE

9. Applications and AEE that do not give sufficient information to enable the application to be adequately evaluated are not accepted, or extra information is requested from the applicant under s 92 of the RMA, with such requests being documented to aid the monitoring of adequacy of information supplied by applicants.

(Section 5.2.1)

10. Criteria on what constitutes "minor adverse effects" are developed to aid the decision on whether or not to notify applications, but that whenever there is doubt a presumption is made in favour of notification.

(Section 5.2.2)

11. The format and standard of council staff reports is appropriate to the requirements of the Fourth Schedule of the RMA and is tailored to the type of consent being sought.

(Section 5.2.3)

12. Technical consultants are retained to review an AEE where insufficient expertise is available among staff.

(Section 5.2.3)

13. Quality control and/or peer review of staff reports take place before staff submit their reports to council management or hearings committees.

(Section 5.2.3)

14. Staff make inspections of application sites wherever possible and the staff report states clearly whether a site inspection has been made.

(Section 5.2.3)

15. Full use made of well organised and facilitated pre-hearing meetings in order to help clarify environmental effects information and mitigation measures and to resolve conflicts in a relatively informal atmosphere.

(Section 6.4)

16. Reporting staff adequately consider but do not rely solely on submitters' concerns to frame review and recommended conditions.

(Section 5.2.3)

17. A "safety net" procedure is used to ensure that council is aware of iwi concerns before deciding on consents.

(Section 6.3)

Mitigation, monitoring and enforcement

18. All conditions are checked to ensure that they can be monitored and are enforceable.

(Sections 7.2, 7.3)

19. Where appropriate, conditions of consent include a specified monitoring programme with costs apportioned between parties.

(Section 7.3.1)

20. Strategies and programmes are established to ensure effective and fair monitoring and enforcing conditions of consents.

(Section 7.3)

8.4 Recommendation to other parties

Recommendation to the Minister for the Environment:

In order to improve the information available to councillors and council staff, applicants, affected parties and the general public:

> update and make widely available information on the assessment of environmental effects, including guidelines and good practice databases and summaries;

such information could be written, electronic or audio-visual, and could be provided in association with the Local Government Association.

(Sections 5.1, 5.2)

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